

ENDANGERED SPECIES ACT OF 1973

HEARINGS

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BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1592

TO PROVIDE FOR THE CONSERVATION, PROTECTION, AND PROPAGATION OF SPECIES OR SUBSPECIES OF FISH AND WILDLIFE THAT ARE PRESENTLY THREATENED WITH EXTINCTION OR LIKELY WITHIN THE FORESEEABLE FUTURE TO BECOME THREATENED WITH EXTINCTION; AND FOR OTHER PURPOSES

S. 1983

TO PROVIDE FOR THE CONSERVATION, PROTECTION, AND PROPAGATION OF SPECIES OR SUBSPECIES OF FISH AND WILDLIFE THAT ARE THREATENED WITH EXTINCTION OR LIKELY WITHIN THE FORESEEABLE FUTURE TO BECOME THREATENED WITH EXTINCTION, AND FOR OTHER PURPOSES

JUNE 18 AND 21, 1973

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ENDANGERED SPECIES ACT OF 1973

MONDAY, JUNE 18, 1973

**U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT,
Washington, D.C.**

The subcommittee met at 9:45 a.m. in room 5110, Dirksen Senate Office Building, Hon. Ted Stevens, presiding.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. I call the subcommittee to order.

I am pleased to have the opportunity afforded me by the chairman of the subcommittee, Senator Hart, to chair this hearing on the proposed endangered species legislation now before the committee, S. 1592 and S. 1983.

I am pleased to welcome such a distinguished list of witnesses. You gentlemen, representing the Federal and State government agencies and also the private conservation organizations, have fought long and hard for significant endangered species legislation.

It is the wish and expectation of Senator Hart, as I understand it, that we will have this hearing today and that there will be another one chaired by Senator Tunney on Thursday, and that will be the last before this subcommittee on the issue of protecting endangered domestic species.

While it may be necessary for the subcommittee to convene hearings at a later time to consider certain proposals to implement the recently signed international convention, the subcommittee should be ready following these hearings once again to report to the Senate a strong and sufficient endangered species protection bill.

I do hope that we can keep this record open for about 10 days following Senator Tunney's hearing because there are people on the west coast who have indicated they are sending their statement rather than coming in here.

We recognize that there is quite a record already developed in the House and the Senate on the issue, and in the interest of fine timing these proposals before us, it is my understanding that today's witnesses have been asked to come prepared to address a few specific issues over which there is still considerable debate by strong supporters of Federal endangered species legislation.

These issues focus on the most reasonable means of providing strong protection for endangered species and balancing other in-

Staff members assigned to these hearings: Leonard Bickwit, Jr., and Paul L. Cunningham.

terests to insure that this particular environmental protection program does not necessarily override other paramount social interests. Most specifically we are concerned this morning with exploring the following issues:

- (1) The relationship between this proposed legislation and the Marine Mammals Protection Act of 1972.
- (2) The rights of the Alaskan natives under this proposed legislation.
- (3) The criteria to be developed for the designation of endangered species.
- (4) The relationship of State and Federal agencies vis-a-vis the protection of endangered species.

To a lesser extent we shall be concerned with certain issues peripheral to these as time permits.

Now, it was intended, and the staff would like to have a panel, but it is my hope if we can agree to have the Federal witnesses testify first, the agency witnesses, and then we will call the balance of the witnesses as a panel.

I hope that you will agree that we can proceed with this as expeditiously as possible.

Unfortunately, we have several other things going on this morning, including another conference committee on the supplemental appropriation which could be called at any time.

I also have a bill coming up at 11:30 this morning and will have to recess the hearing at that time when I am called to the floor.

I know you were all given short notice for this hearing and we did not expect prepared statements to be filed with the committee ahead of time. Anyone that wishes to file a statement, we would be happy to have a statement. We hope that you will deliver it to the committee by next Monday.

I want you to know that I am very much interested in having this legislation passed, but I am also very much interested in defining now what is the interrelationship, as I mentioned, between this and the Marine Mammals Protection Act of 1972 and the relationship of the State and Federal agencies regarding endangered species if this legislation does pass.

[The bills and agency comments follow:]

93d CONGRESS
1st SESSION

S. 1592

IN THE SENATE OF THE UNITED STATES

APRIL 16, 1973

Mr. MAGNUSEN (for himself and Mr. HAYFIELD) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Endangered Species Con-
4 servation Act of 1973".

5 SEC. 2. (a) The Congress finds and declares that one
6 of the unfortunate consequences of growth and development
7 in the United States and elsewhere has been the extermi-
8 nation of some species or subspecies of fish and wildlife; that

VI-O

1 serious losses in other animals with educational, historical,
2 recreational, and scientific value have occurred and are oc-
3 curring; that the United States has pledged itself, pursuant
4 to migratory bird treaties with Canada and Mexico, the
5 Migratory and Endangered Bird Treaty with Japan, the Con-
6 vention on Nature Protection and Wildlife Preservation in
7 the Western Hemisphere, and other international agreements
8 to conserve and protect, where practicable, the various
9 species or subspecies of fish and wildlife, including game and
10 nongame migratory birds, that are presently threatened with
11 extinction; and that the conservation, protection, restora-
12 tion, and propagation of such species or subspecies will inure
13 to the benefit of all citizens. The purposes of this Act are to
14 provide a program for the conservation, protection, restora-
15 tion, and propagation of selected species or subspecies of
16 fish and wildlife, including migratory birds, that are pres-
17 ently threatened with extinction, or are likely within the
18 foreseeable future to become threatened with extinction.

19 (b) It is further declared to be the policy of Congress
20 that all Federal departments and agencies shall seek to pro-
21 tect species or subspecies of fish and wildlife, including
22 migratory birds, that are presently threatened with extinc-
23 tion or are likely within the foreseeable future to become
24 threatened with extinction, and, insofar as is practicable and
25 consistent with the primary purposes of such bureaus, agen-

1 cies, and services, shall utilize their authorities in furtherance
2 of the purpose of this Act.

3 (c) (1) A species or subspecies of fish or wildlife shall
4 be regarded as an endangered species whenever, in his dis-
5 cretion, the Secretary determines, based on the best sci-
6 entific and commercial data available to him and after consulta-
7 tion, as appropriate, with the affected States, and, in coopera-
8 tion with the Secretary of State, the country or countries in
9 which such fish and wildlife are normally found or whose
10 citizens harvest the same on the high seas, and to the extent
11 practicable, with interested persons and organizations, and
12 other interested Federal agencies, that the continued existence
13 of such species or subspecies of fish or wildlife, in the judg-
14 ment of the Secretary, is either presently threatened with
15 extinction or will likely within the foreseeable future become
16 threatened with extinction, throughout all or a significant
17 portion of its range, due to any of the following factors: (i)
18 the destruction, drastic modification, or severe curtailment or
19 the threatened destruction, drastic modification, or severe
20 curtailment of its habitat; or (ii) its overutilization for com-
21 mercial, sporting, scientific, or educational purposes; or (iii)
22 the effect on it of disease or predation; or (iv) the inadequacy
23 of existing regulatory mechanisms; or (v) other natural or
24 manmade factors affecting its continued existence.

25 (2) After making such determination, the Secretary

1 shall publish in the Federal Register, and from time to time
2 he may revise, by regulation, a list, by scientific and common
3 name of such endangered species, indicating as to each species
4 or subspecies so listed whether such species or subspecies is
5 presently threatened with extinction or likely within the fore-
6 seeable future to become threatened with extinction and, in
7 either case, over what portion of the range of such species
8 this condition exists. The endangered species lists which are
9 effective as of the date of enactment shall be republished to
10 conform to the classification of endangered species provided
11 for in this Act: *Provided, however,* That until such republi-
12 cation such an endangered species already listed shall be con-
13 sidered an endangered species presently threatened with
14 extinction pursuant to this Act. An endangered species which
15 is to be republished as a species presently threatened with
16 extinction shall not require public hearing or comment under
17 the provisions of section 553 of title 5, United States Code.
18 Such provisions shall apply to any other regulation issued
19 under this subsection. The Secretary shall, upon the petition
20 of an interested person under subsection 553 (e) of title 5,
21 United States Code, also conduct a review of any listed or
22 unlisted species or subspecies of fish and wildlife proposed to
23 be removed from, added to, or reclassified within the list, but
24 only when he finds and publishes his finding that, to his satis-

1 faction, such person has presented substantial evidence to
2 warrant such a review.

3 (d) For the purposes of this Act, the term—

4 (1) “fish and/or wildlife” means any wild animal,
5 whether or not raised in captivity, including without
6 limitation, any mammal, fish, bird, amphibian, reptile,
7 mollusk, or crustacean; including any part, product, egg,
8 or offspring thereof; or the dead body or parts thereof;

9 (2) “United States” or “State” means the several
10 States of the United States, the District of Columbia,
11 the Commonwealth of Puerto Rico, American Samoa,
12 the Virgin Islands, and Guam;

13 (3) “person” includes any individual, firm, corporation,
14 association, partnership, or private entity;

15 (4) “take” means to pursue, hunt, wound, kill,
16 trap, capture, or collect, or attempt to pursue, hunt,
17 shoot, wound, kill, trap, capture, or collect;

18 (5) “Secretary” means the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of
19 Reorganization Plan Numbered 4 of 1970;

20 (6) “import” means to land on, bring into, or introduce
21 into, or attempt to land on, bring into, or introduce
22 into any place subject to the jurisdiction of the United

1 States, whether or not such landing, bringing, or intro-
2 duction constitutes an importation within the meaning
3 of the tariff laws of the United States;

4 (7) "foreign commerce" includes, among other
5 things, any transaction (1) between persons within one
6 foreign country, or (2) between persons in two or more
7 foreign countries, or (3) between a person within the
8 United States and a person in a foreign country, or (4)
9 between persons within the United States, where the
10 fish or wildlife in question are moving in any country
11 or countries outside the United States.

12 SEC. 3. (a) The Secretary shall utilize the land acqui-
13 sition and other authorities of the Migratory Bird Conserva-
14 tion Act (45 Stat. 1433), as amended (16 U.S.C. 715d-3),
15 the Fish and Wildlife Act of 1956 (70 Stat. 1122), as
16 amended (16 U.S.C. 742f), and the Fish and Wildlife Co-
17 ordination Act (72 Stat. 566; 16 U.S.C. 663), as appro-
18 priate, to carry out a program in the United States of con-
19 serving, protecting, restoring, and propagating those species
20 and subspecies of fish and wildlife that he lists as endangered
21 species pursuant to section 2 of this Act.

22 (b) In addition to the land acquisition authorities other-
23 wise available to him, the Secretary is hereby authorized to
24 acquire by purchase, donation, or otherwise, land and water,
25 or interests therein needed to carry out the purpose of this

1 Act relating to the conservation, protection, restoration, and
2 propagation of those species or subspecies of fish and wildlife
3 that he lists as endangered species pursuant to section 2 of
4 this Act.

5 (c) Funds made available pursuant to the Land and
6 Water Conservation Fund Act of 1965 (78 Stat. 897), as
7 amended (16 U.S.C. 460), may be used for the purpose of
8 acquiring land and water, or interests therein that are needed
9 for the purpose of conserving, protecting, restoring, and
10 propagating those species or subspecies of fish and wildlife,
11 including migratory birds, that he lists as endangered species
12 pursuant to section 2 of this Act.

13 (d) The Secretary shall review other programs admini-
14 stered by him and utilize such programs in furtherance of
15 the purpose of this Act. All other Federal departments and
16 agencies shall, in consultation with and with the assistance
17 of the Secretary, utilize their authorities in furtherance of the
18 purpose of this Act by carrying out programs for the protec-
19 tion of endangered species or subspecies of fish and wildlife
20 and by taking such action necessary to insure that action
21 authorized, funded, or carried out by them do not jeopardize
22 the continued existence of endangered species.

23 SEC. 4. (a) Notwithstanding any other Act of Congress
24 or regulation issued pursuant thereto, and except as author-

1 ized by this Act, it is unlawful for any person subject
2 to the jurisdiction of the United States to—

3 (1) import into or export from the United States;

4 or

5 (2) (A) take within the United States, the terri-
6 torial sea of the United States, or upon the high seas; or

7 (B) when so unlawfully taken, to possess, sell, de-
8 liver, carry, transport, or ship, by any means whatsoever;

9 or

10 (3) deliver, receive, carry, transport, or ship in
11 interstate or foreign commerce, by any means whatso-
12 ever, for commercial purposes; or

13 (4) sell or offer for sale in interstate or foreign com-
14 merce any species or subspecies of fish and wildlife which
15 the Secretary has listed as an endangered species pres-
16 ently threatened with extinction pursuant to section 2
17 of this Act.

18 (b) Whenever the Secretary, pursuant to section 2 of
19 this Act, lists a species or subspecies as an endangered species
20 which is likely within the foreseeable future to become
21 threatened with extinction he shall issue such regulations as
22 he deems necessary and advisable to provide for the conserva-
23 tion, protection, restoration, and propagation of such species
24 or subspecies, including regulations making unlawful any of
25 the acts specified by this section.

1 (c) It is unlawful for any person subject to the juris-
2 diction of the United States to import into the United States
3 any fish and wildlife, other than shellfish and fishery products
4 imported for commercial purposes or taken in waters under
5 the jurisdiction of the United States or on the high seas for
6 recreational purposes, except at a port or ports designated
7 by the Secretary. Any port or ports which have been design-
8 ated by the Secretary by regulation under the authority of
9 the Act of December 5, 1969 (83 Stat. 276; 16 U.S.C.
10 668cc-4 (d)), and are in effect on the date of enactment
11 shall remain effective under the authority of this Act unless
12 modified by the Secretary. For the purpose of facilitating en-
13 forcement of this Act and reducing the costs thereof, the
14 Secretary, with the approval of the Secretary of the Treasury
15 and after notice and opportunity for public hearing, may, by
16 regulation, designate ports and alter such designations. The
17 Secretary, under such terms and conditions as he may pre-
18 scribe, may permit the importation at nondesignated ports in
19 the interest of the health or safety of the fish and wildlife,
20 or for other reasons, if in his discretion, he deems it appro-
21 priate and consistent with the purpose of this subsection.

22 (d) It is unlawful for any person subject to the juris-
23 diction of the United States to attempt or conspire to commit,
24 or to cause to be committed any offense defined in this
25 section.

1 "§ 166. Prompt notification of returns

2 "With respect to any sales transaction where a credit
3 card has been used to obtain credit, where the seller is a
4 person other than the card issuer, and where the seller ac-
5 cepts or allows a return of the goods or forgiveness of a debit
6 for services which were the subject of such sale, the seller
7 shall, unless otherwise requested by the buyer, promptly
8 transmit to the credit card issuer a credit statement with
9 respect thereto and the credit card issuer shall credit the
10 account of the obligor for the amount of the transaction.

11 "§ 167. Prohibition of retroactive finance charges

12 "Any creditor who operates an open-end consumer
13 credit plan under the terms of which the obligor has the
14 option of avoiding the imposition of a finance charge by
15 paying his outstanding balance in full within a specified
16 period of time shall not retroactively assess a finance charge
17 against any balance outstanding in the obligor's account prior
18 to the time when such payment is due.

19 "§ 168. Prohibition of minimum finance charges

20 "(a) No creditor who operates an open-end consumer
21 credit plan may impose a minimum finance charge on any
22 consumer account unless such charge is—

23 "(1) in the nature of a fixed finance charge for the
24 purpose of recovering billing expenses and is imposed

1 subsection 4 (a) of this Act under any contract entered into
2 prior to the date of publication in the Federal Register of
3 notice of a proposed listing of an endangered species presently
4 threatened with extinction, the Secretary, upon such person's
5 filing an application with him and upon filing such informa-
6 tion as the Secretary may require showing to his satisfaction,
7 such hardship, may exempt such person from applicability of
8 subsection 4 (a) : *Provided, however, That no such exemp-*
9 *tion shall be for a duration of more than one year from the*
10 *date of publication in the Federal Register of notice of a*
11 *proposed listing of the affected species or in the quantities*
12 *which exceed those specified by the Secretary: And provided*
13 *further, That the one-year period for those species or sub-*
14 *species of fish and wildlife listed by the Secretary as en-*
15 *dangered prior to the effective date of this Act shall expire*
16 *in accordance with the terms of section 3 of the Act of*
17 *December 5, 1969 (83 Stat. 275).*

18 (c) The prohibitions contained in subparagraph
19 4 (a) (2) of this Act respecting the taking within a State
20 or its territorial sea, as well as analogous regulations which
21 may be issued pursuant to the authority provided in
22 subsection 4 (b) of this Act, may be suspended by the Secre-
23 tary in any State which has entered into and, in the judg-
24 ment of the Secretary, satisfactorily carries out an active pro-
25 gram to manage and protect endangered species. The

1 Secretary's determination that such a suspension is warranted
2 shall include a finding that State laws and regulations are
3 framed and enforced in a manner consistent with, and no less
4 stringent than, the prohibition and exceptions of this Act.
5 Said suspension shall take effect by notice published in the
6 Federal Register, and it may be revoked whenever the Sec-
7 retary finds either that the program to manage and protect
8 such endangered species is not being satisfactorily carried
9 out, or that State laws or regulations, or the enforcement
10 thereof, permit acts prohibited by this Act and the exceptions
11 thereto.

12 SEC. 6. (a) (1) Any person who violates any provision
13 of this Act or of any regulation or permit issued hereunder
14 may be assessed a civil penalty by the Secretary of not more
15 than \$10,000 for each such violation. No such penalty shall
16 be assessed unless such person is given notice and opportu-
17 nity for a hearing with respect to such violation. Each Viola-
18 tion shall be separate offense. Any such civil penalty may be
19 compromised by the Secretary. Upon any failure to pay a
20 penalty assessed under this subsection, the Secretary may
21 request the Attorney General to institute a civil action in a
22 district court of the United States for any district in which
23 such person is found, resides, or transacts business to collect
24 the penalty and such court shall have jurisdiction to hear
25 and decide any such action. The court shall hear such action

1 solely on the record made before the Secretary and shall
2 sustain his action if it is supported by substantial evidence
3 on the record considered as a whole.

4 (2) Hearings held during proceedings for the assessment
5 of civil penalties authorized by paragraph (1) of this sub-
6 section shall be conducted in accordance with section 554 of
7 title 5, United States Code. The Secretary may issue sub-
8 penas for the attendance and testimony of witnesses and the
9 production of relevant papers, books, and documents, and
10 administer oaths. Witnesses summoned shall be paid the same
11 fees and mileage that are paid to witnesses in the courts of
12 the United States. In case of contumacy or refusal to obey a
13 subpoena served upon any person pursuant to this paragraph,
14 the district court of the United States for any district in which
15 such person is found or resides or transacts business, upon
16 application by the United States and after notice to such
17 person, shall have jurisdiction to issue an order requiring
18 such person to appear and give testimony before the Secre-
19 tary or to appear and produce documents before the Secre-
20 tary, or both, and any failure to obey such order of the court
21 may be punished by such court as a contempt thereof.

22 (3) The head of any Federal agency which has issued
23 a lease, license, permit, or other agreement authorizing the
24 grazing of domestic livestock on Federal lands, to any person
25 who is convicted of a criminal violation of this Act or any

1 regulation or permit issued hereunder may immediately
2 modify, suspend, or revoke each lease, license, permit, or
3 other agreement. The Secretary shall also suspend for a
4 period of up to one year, or cancel any Federal hunting or
5 fishing permits or stamps issued to any person who is con-
6 victed or a criminal violation of this Act or any regulation
7 or permit issued hereunder. The United States shall not be
8 liable for the payments of any compensation, reimbursement,
9 or damages in connection with the modification, suspension,
10 or revocation of any leases, licenses, permits, stamps, or other
11 agreements pursuant to this section.

12 (b) Any person who knowingly commits an act which
13 is declared unlawful by this Act, or any regulation or permit
14 issued hereunder, shall, upon conviction, be fined not more
15 than \$20,000 or imprisoned for not more than one year, or
16 both.

17 (c) The several district courts of the United States,
18 including the courts enumerated in section 460 of title 28,
19 United States Code, shall have jurisdiction over any actions
20 arising under this Act. For the purpose of this Act, Ameri-
21 can Samoa shall be included within the judicial district of the
22 District Court of the United States for the District of Hawai'i.

23 (d) (1) The provisions of this Act and any regulations
24 or permits issued pursuant thereto shall be enforced by the
25 Secretary, the Secretary of the Treasury, or the Secretary of

1 § 108. Conforming amendments

2 (a) The table of chapters of the Truth in Lending Act is
3 amended by adding immediately under item 3 the following:
“4. CREDIT BILLING..... 161”.

4 (b) Section 111 (d) of such Act (15 U.S.C. 1610 (d))
5 is amended by striking out "and 130" and inserting in lieu
6 thereof a comma and the following: "130, 166, 167, and
7 168".

8 § 109. Effective date

9 This title takes effect upon the expiration of one year
10 after the date of its enactment.

11 TITLE II—AMENDMENTS TO THE TRUTH IN
12 LENDING ACT

13 § 201. More-than-four-installment rule

14 (a) The first sentence of section 103 (f) of the Truth
15 in Lending Act (15 U.S.C. 1602 (f)) is amended by in-
16 serting "which is payable by agreement in more than four
17 installments or" after "credit".

18 (b) Section 121 (a) of the Truth in Lending Act (15
19 U.S.C. 1631 (a)) is amended by striking out all after "ex-
20 tended" and inserting "the information required under this
21 chapter, where—

22 “(1) a finance charge is or may be imposed, or
23 “(2) the extension of credit is payable by agree-
24 ment in more than four installments.”

1 other means of transportation used to aid the taking, possess-
2 ing, selling, purchasing, offering for sale or purchase, trans-
3 porting, delivering, receiving, carrying, shipping, exporting,
4 or importing of any fish and wildlife in violation of this Act,
5 any regulation made pursuant thereto or any permit issued
6 thereunder shall be subject to forfeiture to the United States.

7 (5) All provisions of law relating to the seizure, for-
8 feiture, and condemnation of a vessel for violation of the
9 customs laws, the disposition of such vessel or the proceeds
10 from the sale thereof, and the remission or mitigation of such
11 forfeiture, shall apply to the seizures and forfeitures incurred,
12 or alleged to have been incurred, under the provisions of this
13 Act, insofar as such provisions of law are applicable and not
14 inconsistent with the provisions of this Act: *Provided*, That
15 all powers, rights, and duties conferred or imposed by the
16 customs laws upon any officer or employee of the Treasury
17 Department shall, for the purposes of this Act, be exercised
18 or performed by the Secretary or by such persons as he may
19 designate.

20 (e) The Secretary may require any person importing
21 or exporting fish and wildlife, other than shellfish and fishery
22 products imported for commercial purposes or taken in
23 waters under the jurisdiction of the United States or on the
24 high seas for recreational purposes, to file a declaration with

4 him stating such information as he deems necessary to
2 facilitate enforcement of this Act.

3 (f) The Secretary, the Secretary of the Treasury, and
4 the Secretary of the Department in which the Coast Guard
5 is operating, are authorized to promulgate such regulations
6 as may be appropriate to carry out the purposes of this Act,
7 and charge reasonable fees for expenses to the Government
8 connected with permits authorized by this Act, including
9 processing applications and reasonable inspections, and with
10 the transfer, board, handling, or storage of fish and wildlife
11 and evidentiary items seized and forfeited under this Act.
12 All such fees collected pursuant to this subsection shall be
13 deposited in the Treasury to the credit of the appropriation
14 which is current and chargeable for the cost of furnishing
15 the services. Appropriated funds may be expended pending
16 reimbursement from parties in interest.

17 SEC. 7. (a) In order to carry out the provisions of this
18 Act, the Secretary, through the Secretary of State, shall en-
19 courage foreign countries to provide for the protection, con-
20 servation, and propagation of fish and wildlife, including those
21 species listed as endangered pursuant to section 2 of this Act,
22 and shall encourage bilateral and multilateral agreements with
23 such countries for the protection, conservation, and propaga-
24 tion of fish and wildlife. The Secretary shall also encourage

1 persons, taking directly or indirectly fish and wildlife in for-
2 eign countries or on the high seas for importation into the
3 United States for commercial or other purposes, to develop
4 and carry out, with such assistance as he may provide, con-
5 servation practices designed to enhance such fish and wildlife
6 and their habitat. After consultation with the Secretary of
7 State, the Secretary is authorized to assign or otherwise make
8 available any officer or employee of his department for the
9 purpose of cooperating with foreign countries and interna-
10 tional organizations in developing personnel resources and
11 programs which promote the protection, conservation, and
12 propagation of fish and wildlife. He is authorized to conduct
13 or provide financial assistance for educational training of for-
14 eign personnel, in this country or abroad, in the subjects of
15 fish and wildlife management, research, and law enforce-
16 ment and to render professional assistance abroad in such
17 matters. After consultation with the Secretary of State and
18 the Secretary of the Treasury, as appropriate, the Secretary
19 is authorized to conduct or cause to be conducted such law
20 enforcement investigations and research abroad as he deems
21 necessary to carry out the purposes of this Act.

22 (b) The Secretary of Agriculture and the Secretary
23 shall provide for appropriate coordination of the administra-
24 tion of this Act and amendments made by this Act, with the
25 administration of the animal quarantine laws (19 U.S.C.

1 1306; 21 U.S.C. 101-105, 111-135b, and 612-614) and
2 the Tariff Act of 1930, as amended (sec. 1306 of title 19).
3 Nothing in this Act or any amendment made by this Act,
4 shall be construed as superseding or limiting in any manner
5 the functions of the Secretary of Agriculture under any other
6 law relating to prohibited or restricted importations or posses-
7 sion of animals and other articles and no proceeding or deter-
8 mination under this Act shall preclude any proceeding or be
9 considered determinative of any issue of fact or law in any
10 proceeding under any Act administered by the Secretary of
11 Agriculture.

12 (c) Nothing in this Act, or any amendment made by
13 this Act, shall be construed as superseding or limiting in any
14 manner the functions and responsibilities of the Secretary of
15 the Treasury under the Tariff Act of 1930, as amended,
16 including, without limitation, section 1527 of title 19, United
17 States Code, relating to the importation of wildlife taken,
18 killed, possessed, or exported to the United States in violation
19 of the laws or regulations of a foreign country.

20 SEC. 8. (a) In carrying out the program authorized by
21 this Act, the Secretary shall cooperate to the maximum
22 extent practicable with the several States. Such cooperation
23 may include consultation before the acquisition of any land
24 and water, or interest therein, for the purposes of conserving,
25 protecting, restoring, or propagating any endangered species,

1 (b) The Secretary may enter into agreements with the
2 States for the administration and management of any area
3 established for the conservation, protection, restoration, and
4 propagation of endangered species. Any revenues derived
5 from the administration of such areas under these agreements
6 shall be subject to the provisions of section 401 of the Act
7 of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C.
8 715s).

9 SEC. 9. (a) Subsection 4(c) of the Act of October 15,
10 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd(c)),
11 is further amended by revising the second sentence thereof
12 to read as follows: "With the exception of endangered
13 species listed by the Secretary pursuant to section 2 of the
14 Endangered Species Conservation Act of 1973, nothing in
15 this Act shall be construed to authorize the Secretary to
16 control or regulate hunting or fishing or resident fish and
17 wildlife on lands not within the system."

18 (b) Subsection 10(a) of the Migratory Bird Conserva-
19 tion Act (45 Stat. 1224), as amended (16 U.S.C. 715i
20 (a)), is further amended by inserting "or likely within the
21 foreseeable future to become threatened with" between the
22 words "with" and "extinction".

23 (c) Subsection 401(a) of the Act of June 15, 1935
24 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is fur-
25 ther amended by inserting "or likely within the foreseeable

1 future to become threatened with" between the words
2 "with" and "extinction" in the last sentence thereof.

3 (d) Subsection 6(a) (1) of the Land and Water Con-
4 servation Fund Act of 1965 (78 Stat. 903), as amended (16
5 U.S.C. 460l-9(a) (1)), is further amended by inserting "or
6 likely within the foreseeable future to become threatened
7 with" between the words "with" and "extinction".

8 SEC. 10. (a) Sections 1 through 3 of the Act of October
9 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C.
10 668aa-668cc), are hereby repealed in their entirety.

11 (b) Sections 1 through 6 of the Act of December 5,
12 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through 668cc-
13 6), are hereby repealed in their entirety.

14 SEC. 11. There are hereby authorized to be appropriated
15 such sums as may be necessary to carry out the purposes of
16 this Act.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1973

Mr. WILLIAMS introduced the following bill; which was read twice and referred
to the Committee on Commerce

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That this Act may be cited as the "Endangered Species Con-*
4 *servation Act of 1973".*

5 **FINDINGS AND POLICY**

6 SEC. 2. (a) The Congress finds and declares that one
7 of the unfortunate consequences of growth and development
8 in the United States and elsewhere has been the extirmina-

1 tion of some species or subspecies of fish and wildlife and
2 flora; that serious losses in other species of wild animals
3 with educational, historical, recreational, and scientific
4 value have occurred and are occurring; that the United
5 States has pledged itself, pursuant to migratory bird treaties
6 with Canada and Mexico, the migratory and endangered
7 bird treaty with Japan, the Convention on Nature Protec-
8 tion and Wildlife Preservation in the Western Hemisphere,
9 the International Convention for the Northwest Atlantic
10 Fisheries, the International Convention for the High Seas
11 Fisheries of the North Pacific Ocean, and other international
12 agreements, to conserve and protect, where practicable, the
13 various species of fish and wildlife and flora that are threat-
14 ened with extinction; and that the conservation, protection,
15 restoration, or propagation of such species will insure to
16 the benefit of all citizens. The purposes of this Act are to
17 provide a program for the conservation, protection, restora-
18 tion, or propagation of species and subspecies of fish and
19 wildlife and flora that are threatened with extinction, or
20 are likely within the foreseeable future to become threat-
21 ened with extinction.

22 (b) It is further declared to be the policy of Congress
23 that all Federal departments and agencies shall seek to pro-
24 tect species or subspecies of fish and wildlife, and flora that
25 are threatened with extinction or are likely within the foresee-

1 able future to become threatened with extinction, and wher-
2 ever practicable, shall utilize their authorities in furtherance
3 of the purpose of this Act.

4 **DEFINITIONS**

5 **SEC. 3.** For the purposes of this Act:

6 (1) The term "Federal lands" means all lands or
7 interests therein over which Congress has legislative au-
8 thority under article IV, section 3, clause 2 of the
9 United States Constitution, including, without limitation,
10 lands enumerated in section 1400 of title 43, United
11 States Code.

12 (2) The term "fish" means any fish or any part,
13 products, eggs, or offspring thereof, or the dead body or
14 parts thereof.

15 (3) The term "import" means to bring into the
16 territorial limits of the United States and includes, with-
17 out limitation, entry into a foreign trade zone, and trans-
18 shipment through any portion of the United States
19 without customs entry.

20 (4) The term "person" means (A) any private
21 person or entity, and (B) any officer, employee, agent,
22 department, or instrumentality of the Federal Govern-
23 ment, of any State or political subdivision thereof, or of
24 any foreign government.

25 (5) The term "Secretary" means the Secretary of

1 the Interior with respect to functions and responsibilities
2 under this Act relating to fish and wildlife, and the Sec-
3 retary of Agriculture with respect to functions and re-
4 sponsibilities under this Act relating to flora.

5 (6) The term "take" means (A) with respect to
6 fish or wildlife, to threaten, harass, hunt, capture, or kill,
7 or attempt to threaten, harass, hunt, capture, or kill;
8 or the destruction, modification, or curtailment of its
9 habitat or range; and (B) with respect to flora, to col-
10 lect, sever, remove, or otherwise damage in any manner,
11 or to attempt to collect, sever, remove, or otherwise dam-
12 age in any manner.

13 (7) The term "United States" includes the several
14 States, the District of Columbia, and the Commonwealth
15 of Puerto Rico, the Canal Zone, the possessions of the
16 United States, and the Trust Territory of the Pacific
17 Islands.

18 (8) The term "wildlife" means any wild mammal,
19 game or nongame migratory bird, wild bird, amphibi-
20 an, reptile, mollusk or crustacean, or other animal, or
21 any part, products, egg, or offspring thereof, or the dead
22 body or parts thereof, including migratory, nonmigra-
23 tory, and endangered birds for which protection is also
24 afforded by treaty or other international agreement.

1 DETERMINATION OF ENDANGERED SPECIES

2 SEC. 4. (a) A species or subspecies of fish or wildlife
3 or flora shall be regarded as an endangered species, when-
4 ever—5 (1) the appropriate Secretary by regulation deter-
6 mines, based on the best scientific and commercial data
7 available to him and after consultation, as appropriate,
8 with the affected States, and, in cooperation with the
9 Secretary of State, the country or countries in which
10 such fish and wildlife are normally found or whose citi-
11 zens harvest the same on the high seas, and with inter-
12 ested persons and organizations, and other interested
13 Federal agencies, that the continued existence of such
14 species or subspecies of fish or wildlife or flora, through-
15 out all or a significant portion of its habitat or range, is
16 either presently threatened with extinction or will likely
17 within the foreseeable future become threatened with
18 extinction, due to any of the following factors:19 (A) the present or threatened destruction, mod-
20 ification, or curtailment of its habitat or range;
21 (B) overutilization for commercial, sporting,
22 scientific, or educational purposes;
23 (C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence; or

7 (b) The appropriate Secretary shall publish in the
8 Federal Register, not less than annually, a list, by scientific
9 and common name or names, of species or subspecies deter-
10 mined, pursuant to this section, to be endangered, indicating
11 as to each species or subspecies so listed whether such species
12 or subspecies is threatened with extinction or is likely within
13 the foreseeable future to become threatened with extinction
14 or whether its status is unknown and, in either case, over
15 what portion of the range of such species or subspecies this
16 condition exists. The appropriate Secretary may, from time
17 to time, by regulation revise any such list. The endangered
18 species lists which are effective as of the date of enactment
19 of this Act shall be republished to conform to the provisions of
20 this Act: *Provided, however,* That until such republishing
21 nothing herein shall be deemed to invalidate such en-
22 dangered species lists. The provisions of section 553 of title 5,
23 United States Code, shall apply to any regulation issued un-
24 der this subsection. The Secretary shall, upon the petition of
25 an interested person under subsection 553 (e) of title 5,

1 United States Code, also conduct a review, on the record,
2 after opportunity for agency hearing of any listed or unlisted
3 species of fish or wildlife proposed to be removed from or
4 added to the list, but only if he finds and publishes his findings
5 that such person has presented substantial evidence to war-
6 rant such review.

7 **LAND ACQUISITION AND AGENCY COMPLIANCE**

8 SEC. 5. (a) The Secretary shall utilize the land ac-
9 quisition and other authorities of the Migratory Bird Conser-
10 vation Act, as amended, the Fish and Wildlife Act of 1956,
11 as amended, and the Fish and Wildlife Coordination Act, as
12 appropriate, to carry out a program in the United States of
13 conserving, protecting, restoring, or propagating those
14 species and subspecies of fish and wildlife that he lists as
15 endangered species pursuant to section 2 of this Act.

16 (b) In addition to the land acquisition authorities other-
17 wise available to him, the appropriate Secretary is hereby
18 authorized to acquire by purchase, donation, or otherwise,
19 lands or interests therein needed to carry out the purpose of
20 this Act relating to the conservation, protection, restoration,
21 and propagation of those species or subspecies of fish and
22 wildlife and flora that he lists as endangered species pursu-
23 ant to section 4 of this Act.

24 (c) Funds made available pursuant to the Land and
25 Water Conservation Fund Act of 1965, as amended, may

1 be used for the purpose of acquiring lands, waters, or inter-
2 ests therein pursuant to this section that are needed for the
3 purpose of conserving, protecting, restoring, or propagating
4 those species or subspecies of fish and wildlife and flora that
5 he lists as endangered species pursuant to section 4 of this
6 Act.

7 (d) The appropriate Secretary shall review other pro-
8 grams administered by him and, to the extent practicable
9 utilize such programs in furtherance of the purpose of this
10 Act. All other Federal departments and agencies shall, in
11 consultation with and with the assistance of the Secretary,
12 utilize, wherever practicable, their authorities in furtherance
13 of the purpose of this Act by carrying out programs for the
14 protection of endangered species of fish or wildlife or flora
15 and by taking such actions as may be necessary to insure
16 that actions authorized, funded, regulated, or administered by
17 them do not jeopardize the continued existence of endan-
18 gered species or result in destruction or modification of critical
19 habitat of such species.

20 (f) In carrying out the provisions of this Act, the Sec-
21 retary, through the Secretary of State, shall encourage
22 foreign countries to provide protection to species or sub-
23 species of fish or wildlife threatened with extinction, to
24 take measures to prevent any fish or wildlife from becoming
25 threatened with extinction, and he shall, through the Secre-

1 tary of State, encourage bilateral and multilateral agree-
2 ments with such countries for the conservation and propaga-
3 tion of fish and wildlife. The Secretary is authorized to
4 assign or otherwise make available any officer or employee
5 of his department for the purpose of cooperating with
6 foreign countries and international organizations in develop-
7 ing personnel resources and programs which promote con-
8 servation of fish or wildlife, including (1) educational train-
9 ing of United States and foreign personnel, here or abroad,
10 in the subjects of fish and wildlife management, research,
11 and law enforcement; and (2) rendering professional assist-
12 ance abroad in such matters. The Secretary is also author-
13 ized to conduct or cause to be conducted such law enforce-
14 ment investigations and research abroad as he deems neces-
15 sary to carry out the obligations imposed upon him by this
16 **Act.**

17 **COOPERATION WITH THE STATES**

18 **SEC. 6. (a)** In carrying out the program authorized
19 by this Act, the appropriate Secretary shall cooperate to the
20 maximum extent practicable with the several States. Such
21 cooperation shall include consultation before the acquisition
22 of any land for the purpose of conserving, protecting, restor-
23 ing, or propagating any endangered species.

24 **(b)** The Secretary may enter into agreements with the
25 States for the administration and management of any area

1 established for the conservation, protection, restoration,
2 or propagation of endangered species. Any revenues derived
3 from the administration of such areas under these agree-
4 ments shall be subject to the provisions of section 401 of
5 the Act of June 15, 1935 (49 Stat. 383), as amended (16
6 U.S.C. 715s).

7 (e) The Secretary may delegate to a State the authority
8 to regulate the taking by any person of endangered species or
9 subspecies of resident fish and wildlife when he determines
10 that such State maintains an adequate and active program,
11 consistent with the policies and purposes of this Act, to man-
12 age and protect such endangered species in accordance with
13 criteria issued by the Secretary.

14 (d) Any action taken by the Secretary under this sec-
15 tion shall be subject to his periodic and continual review at no
16 greater than annual intervals. Such review shall include the
17 consideration of comment received from interested persons.

18 (e) Nothing in this Act, or any amendment made by
19 this Act, shall be construed as superseding or limiting the
20 power of any State to enact legislation more restrictive than
21 the provisions of this Act for the protection and conservation
22 of wildlife, including the regulation or prohibition of the
23 retail sale of specimens or of products processed or manu-
24 factured from the specimens of wildlife, whether such speci-
25 mens are alive or dead.

PROHIBITED ACTS

14 SEC. 7. (a) Notwithstanding any other Act of
15 Congress or regulation issued pursuant thereto, and except
16 as hereinafter provided, any person who—

20 (B) takes or causes to be taken within the United
21 States, the territorial sea of the United States, Fed-
22 eral lands, or upon the high seas; or

23 (C) ships, carries, or receives by any means in
24 interstate commerce

25 any species or subspecies of fish or wildlife or flora which

1 the Secretary has listed as an endangered species threatened
2 with extinction pursuant to section 4 of this Act, shall be
3 punished in accordance with the provisions of section 9 of
4 this Act.

5 (b) Whenever the Secretary, pursuant to section 4 of
6 this Act, lists a species or subspecies as an endangered spe-
7 cies which is likely within the foreseeable future to become
8 threatened with extinction, he shall issue such regulations
9 as he deems necessary or advisable to provide for the con-
10 servation, protection, restoration, or propagation of such
11 species or subspecies, including regulations subjecting to
12 punishment in accordance with section 9 of this Act any
13 person who—

14 (1) imports into or exports from the United States,
15 receives, or causes to be so imported, received, or ex-
16 ported; or

17 (2) takes or causes to be taken within the United
18 States, the territorial sea of the United States, Federal
19 lands or upon the high seas; or

20 (3) ships, carries, or receives by any means in
21 interstate commerce

22 any such species or subspecies of fish or wildlife or flora likely
23 within the foreseeable future to become threatened with
24 extinction.

25 (c) The Secretary shall allow taking of an endangered

- 1 species which is likely within the foreseeable future to be-
- 2 come threatened only (1) when it can clearly be shown
- 3 that such taking will not damage the population, or (2)
- 4 in emergency cases involving human health and safety.

5 (d) For the purpose of facilitating enforcement of this
6 Act the Secretary may from time to time, by regulation, ex-
7 tend the protection of this section, to the extent he deems it
8 advisable, to any species or subspecies of fish or wildlife or
9 flora which is not listed as an endangered species, but which
10 so closely resembles in appearance, at that point in question,
11 a species or subspecies of fish or wildlife or flora which has
12 been listed as endangered, that substantial difficulty is posed
13 to enforcement personnel in attempting to differentiate be-
14 tween the endangered and nonendangered species of sub-
15 species of fish or wildlife or flora, and this difficulty poses
16 an additional threat to the endangered species or subspecies.

EXCEPTIONS

18 SEC. 8. (a) The Secretary may permit, under such
19 terms and conditions as he may prescribe, the importation,
20 taking, or the transportation in interstate commerce of any
21 species or subspecies of fish or wildlife or flora listed as an
22 endangered species threatened with extinction for scientific
23 purposes, and for the propagation of such fish and wildlife
24 in captivity for preservation purposes, but only if he finds
25 that such importation, taking, or transportation in interstate

1 commerce, or projected use will not adversely affect the re-
2 generative capacity of such specimen or of such species or
3 subspecies in a significant portion of its range or habitat or
4 otherwise affect the survival of the wild population of such
5 species.

6 (b) In order to minimize undue economic hardship to
7 any person importing, exporting, taking, or transporting in
8 interstate commerce any species or subspecies of fish or
9 wildlife or flora which is listed as an endangered species
10 pursuant to section 4 of this Act under any contract entered
11 into prior to the date of original publication of such listing
12 in the Federal Register, the Secretary, upon such person
13 filing an application with him and upon filing such informa-
14 tion as the Secretary may require showing, to his satisfaction,
15 such hardship, may permit such person to import, export,
16 take, or transport such species or subspecies in such quantities
17 and for a period not to exceed one year, as he determines
18 to be appropriate.

19 **PENALTIES AND ENFORCEMENT**

20 SEC. 9. (a) (1) Any person who violates any provi-
21 sion of this Act or any regulation or permit issued there-
22 under, other than a person who commits a violation the
23 penalty for which is prescribed by subsection (b) of this
24 section, shall be assessed a civil penalty by the appropriate
25 Secretary of not more than \$10,000 for each such violation.

1 No penalty shall be assessed unless such person is given notice
2 and opportunity for a hearing with respect to such violation.
3 Each violation shall be a separate offense. Any such civil
4 penalty may be compromised by the appropriate Secretary.
5 Upon any failure to pay the penalty assessed under this para-
6 graph, the appropriate Secretary may request the Attorney
7 General to institute a civil action in a district court of the
8 United States for any district in which such person is found
9 or resides or transacts business to collect the penalty, and
10 such court shall have jurisdiction to hear and decide any such
11 action. In the case of Guam such actions may be brought in
12 the District Court of Guam; in the case of the Virgin Islands
13 such actions may be brought in the District Court of the
14 Virgin Islands; and in the case of American Samoa such
15 actions may be brought in the District Court of the United
16 States for the district of Hawai'i and such courts shall have
17 jurisdiction of such actions. In hearing such action, the court
18 shall sustain the Secretary's action if such action is supported
19 by substantial evidence.

20 (2) Whenever any property is seized pursuant to sub-
21 section (e) of this section, the appropriate Secretary shall
22 move to dispose of the civil penalty proceedings pursuant to
23 paragraph (1) of this subsection as expeditiously as possible.
24 Upon the assessment and collection of a civil penalty pur-
25 suant to paragraph (1) of this subsection, any property so

1 seized may be proceeded against in any court of competent
2 jurisdiction and forfeited. Fish or wildlife or flora so forfeited
3 shall be conveyed to the appropriate Secretary for disposi-
4 tion by him in such a manner as he deems appropriate. If,
5 with respect to any such property so seized, no compromise
6 forfeiture has been achieved or no action is commenced to
7 obtain the forfeiture of such fish, wildlife, flora, property,
8 or item within thirty days following the completion of a civil
9 proceedings involving an assessment and collection of a civil
10 penalty, such property shall be immediately returned to the
11 owner or the consignee in accordance with regulations pro-
12 mulgated by the Secretary.

13 (3) Proceedings for the assessment of civil penalties
14 pursuant to paragraph (1) of this subsection shall be con-
15 ducted in accordance with section 554 of title 5. The appro-
16 priate Secretary may issue subpoenas for the attendance and
17 testimony of witnesses and the production of relevant papers,
18 books, and documents, and administer oaths. Witnesses sum-
19 moned shall be paid the same fees and mileage that are paid
20 witnesses in the courts of the United States. In case of con-
21 tumacy or refusal to obey a subpoena served upon any person
22 pursuant to this paragraph, the district court of the United
23 States for any district in which such person is found or resides
24 or transacts business, upon application by the United States
25 and after notice to such person, shall have jurisdiction to

1 issue an order requiring such person to appear and give testi-
2 mony before the appropriate Secretary or to appear and
3 produce documents before the Secretary, or both, and any
4 failure to obey such order of the court may be punished by
5 such court as a contempt thereof.

6 (b) Any person who knowingly violates any provision
7 of this Act, or any regulation or permit issued thereunder,
8 shall, upon conviction, be fined not more than \$20,000 or
9 imprisoned for not more than one year, or both, and any
10 Federal hunting or fishing licenses, permits, or stamps may
11 be revoked or withheld for a period of up to five years. Upon
12 conviction, (1) any fish or wildlife or flora seized shall be
13 forfeited to the Secretary for disposal by him in such man-
14 ner as he deems appropriate, and (2) any other property
15 seized pursuant to subsection (c) of this section may, in the
16 discretion of the court, commissioner, or magistrate, be for-
17 feited to the United States or otherwise disposed of. If no
18 conviction results from any such alleged violation, such prop-
19 erty so seized in connection therewith shall be immediately
20 returned to the owner or consignee in accordance with regu-
21 lations promulgated by the appropriate Secretary, unless the
22 Secretary, within thirty days following the final disposition
23 of the case involving such violations, commences proceedings
24 under subsection (a) of this section.

25 (c) (1) The provisions of sections 7 and 8 of this Act

1 and any regulations or permits issued pursuant thereto, or
2 pursuant to subsection (d) or (e) of this section, shall be
3 enforced by the appropriate Secretary, the Secretary of the
4 Treasury, or the Secretary of the Department in which the
5 Coast Guard is operating, or all such Secretaries. Each such
6 Secretary may utilize, by agreement, with or without reim-
7 bursement, the personnel, services, and facilities of any other
8 Federal agency or any State agency.

9 (2) Any authorized agent of the Departments of the
10 Interior, of Commerce, of Agriculture, or of the Treasury
11 may, with or without a warrant, arrest any person who
12 such agent has probable cause to believe is knowingly violat-
13 ing this Act, in his presence or view, or any regulation or
14 permit issued thereunder, the penalty for which is provided
15 under subsection (b) of this section. An agent who has
16 made an arrest of a person in connection with any such will-
17 ful violation may search such person at the time of his arrest
18 and seize any property taken, used, or possessed in connec-
19 tion with any such violation.

20 (3) Any authorized agent of the Departments of the
21 Interior, of Commerce, of Agriculture, or of the Treasury
22 shall have authority to search and seize with or without a
23 warrant, as provided by the customs laws and by the law
24 relating to search and seizure. Any such officer or agent is
25 authorized to execute warrants to search for and seize any

1 property, including, for the purposes of this section, any fish,
2 wildlife, flora, aircraft, boat, or other conveyance, weapon,
3 business records, shipping documents, or other items which
4 have been taken, used, or possessed in connection with the
5 violation of any section, regulation, or permit with respect
6 to which a civil or criminal penalty may be assessed, pur-
7 suant to subsection (a) or (b) of this section. Any property
8 seized pursuant to this section shall be held by any agent
9 authorized by the Secretary or the Secretary of the Treas-
10 ury, or by a United States marshal, pending disposition of
11 proceedings under subsection (a) or (b) of this section;
12 except that either Secretary may, in lieu of holding such
13 property, either (1) permit a bond or other satisfactory
14 surety to be posted, or (2) place the fish or wildlife or flora
15 in the custody of such person as he shall designate. Upon the
16 imposition of a civil or criminal penalty, or a forfeiture, the
17 costs to the Government of transfer, board, and handling,
18 including the cost of investigations at a nondesignated port
19 of entry, shall be payable to the account of the Secretary.
20 The owner or consignee of any property so seized shall, as
21 soon as practicable following such seizure, be notified of the
22 fact in accordance with regulations established by the
23 Secretary.

24 (d) The Secretary may request the Attorney General
25 to bring appropriate action to prevent threatened violations

1 of this Act, or of any regulations or orders promulgated
2 pursuant thereto.

3 (e) For the purposes of facilitating enforcement of
4 this Act and reducing the costs thereof, the Secretary, with
5 the approval of the Secretary of the Treasury, shall, after
6 notice and an opportunity for a public hearing, from time
7 to time designate, by regulation, any port or ports in the
8 United States for the importation of fish and wildlife (other
9 than shellfish and fishery products) or flora into the United
10 States. The importation of such fish or wildlife or flora
11 into any port in the United States, except those so desig-
12 nated, shall be prohibited after the effective date of such
13 designations; except that the Secretary, under such terms
14 and conditions as he may prescribe, may permit importation
15 at nondesignated ports in the interest of the health or safety
16 of the fish or wildlife. Such regulations may provide other
17 exceptions to such prohibition if the Secretary, in his discre-
18 tion, deems it appropriate and consistent with the purposes
19 of this subsection.

20 (f) The Secretary is authorized to promulgate such regu-
21 lations as may be appropriate to carry out the purposes of
22 this Act, and the Secretaries of the Treasury and the De-
23 partment in which the Coast Guard is operating are
24 authorized to promulgate such regulations as may be appro-
25 priate to the exercise of responsibilities under subsection
26 (e) (1) of this section.

1 (g) (1) Any person who engages to any extent in busi-
2 ness as an importer of fish and wildlife must register with
3 the Secretary of the Treasury his name and the address of
4 each place of business at which, and all trade names under
5 which, he conducts such business.

6 (2) Any person required to register with the Secretary
7 of the Treasury under paragraph (1) of this subsection
8 shall—

9 (A) keep such records as will fully and correctly
10 disclose each importation of fish and wildlife made by
11 him and the subsequent disposition made by him with
12 respect to such fish and wildlife; and

13 (B) at all reasonable times upon notice by a duly
14 authorized representative of the Secretary, afford such
15 representative access to his places of business and oppor-
16 tunity to examine his inventory of imported fish and
17 wildlife and the records required to be kept under sub-
18 paragraph (A) of this paragraph, and to copy such
19 records.

20 (3) The Secretary of the Treasury shall prescribe such
21 regulations as are necessary and appropriate to carry out
22 the purposes of this subsection.

23 **INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION**

24 SEC. 10. (a) (1) In carrying out the provisions of
25 this Act, the Secretary, through the Secretary of State,
26 shall encourage foreign countries to provide protection to

1 species or subspecies of fish and wildlife or flora threatened
2 with extinction, to take measures to prevent any fish or
3 wildlife from becoming threatened with extinction, and shall
4 cooperate with such countries in providing technical assist-
5 ance in developing and carrying out programs to provide such
6 protection, and shall, through the Secretary of State, encour-
7 age bilateral and multilateral agreements with such countries
8 for the protection, conservation, or propagation of fish and
9 wildlife or flora. The Secretary shall also encourage persons,
10 taking directly or indirectly fish or wildlife or flora in for-
11 eign countries or on the high seas for importation into the
12 United States for commercial or other purposes, to develop
13 and carry out, with such assistance as he may provide under
14 any authority available to him, conservation practices de-
15 signed to enhance such fish or wildlife or flora and their
16 habitat or range. The Secretary of State, in consultation with
17 the Secretary, shall take appropriate measures to encourage
18 the development of adequate measures, including, if appro-
19 priate, international agreements, to prevent such fish or wild-
20 life or flora from becoming threatened with extinction.

21 (2) To assure the worldwide conservation of endan-
22 gered species and to avoid unnecessary harm to affected
23 United States industries, the Secretary, through the Secre-
24 tary of State, shall seek the convening of an international
25 ministerial meeting on fish and wildlife prior to November 1,

1 1973, and included in the business of that meeting shall be
2 the signing of a binding international convention on the
3 conservation of endangered species.

4 (b) The Secretary of Agriculture and the Secretary
5 shall provide for appropriate coordination of the adminis-
6 tration of this Act and amendments made by this Act, with
7 the administration of the animal quarantine laws (19 U.S.C.
8 1306; 21 U.S.C. 101-105, 111-135b, and 612-614).
9 Nothing in this Act, or any amendment made by this Act,
10 shall be construed as superseding or limiting in any manner
11 the functions of the Secretary of Agriculture under any other
12 law relating to prohibited or restricted importations of
13 animals and other articles and no proceeding or determina-
14 tion under this Act shall preclude any proceeding or be con-
15 sidered determinative of any issue of fact or law in any pro-
16 ceeding under any Act administered by the Secretary of
17 Agriculture.

18 (c) Whenever the Secretary determines pursuant to
19 this Act or any other authority vested in him, that a species
20 of fish or wildlife is an endangered species, and publishes
21 regulations pertaining to the protection, control, manage-
22 ment, or enhancement of such endangered species, the Secre-
23 tary of Agriculture may use all authorities available to him
24 with respect to research, investigations, conservation, devel-
25 opment, protection, management, and enhancement of fish

1 and wildlife, including, but not limited to, the conservation
2 operations program, watershed protection and flood preven-
3 tion programs, rural environmental assistance program, Great
4 Plains conservation program, resource conservation and
5 development program, forestry programs, and water bank
6 program, in the protection, control, management, or en-
7 hancement of such endangered species. Recognizing the na-
8 tional and international interest in the protection and en-
9 hancement of such endangered species, the Secretary of
10 Agriculture is authorized, notwithstanding the provisions of
11 any other law, to bear the full cost, or any lesser amount that
12 he, in consultation with the Secretary may determine desir-
13 able to accomplish the objectives of the Act, of the cost of
14 installing any practice, measure, work of improvement,
15 facility, or other developmental, protective, or management
16 systems on private land, the primary purpose of which is
17 for the purpose of enabling the landowner to comply with the
18 regulations, or other recommendations, of the Secretary
19 pertaining to the protection, control, management, or en-
20 hancement of such endangered species. The Secretary of
21 Agriculture, in carrying out the purposes of this section, shall
22 utilize his authorities to conduct research and investigations
23 into vegetative and structural methods and other methods
24 and practices, measures, works of improvement, and facilities
25 most appropriate or effective in the protection, control, man-

1 agement, or enhancement of such endangered species. If
2 determined desirable, the Secretary and the Secretary of
3 Agriculture shall be authorized to jointly carry out research,
4 surveys, and investigations. The Secretary is authorized to
5 transfer to the Secretary of Agriculture such funds as may
6 be necessary to carry out the purposes of this subsection.

7 (d) Nothing in this Act, or any amendment made by
8 this Act, shall be construed as superseding or limiting in
9 any manner the functions and responsibilities of the Secre-
10 tary of the Treasury under the Tariff Act of 1930, as
11 amended, including, without limitation, section 527 of such
12 Act relating to the importation of wildlife taken, killed,
13 possessed, or exported to the United States in violation of
14 the laws or regulations of a foreign country.

15 CONFORMING AMENDMENTS

16 SEC. 11. (a) Subsection 4(c) of the Act of October
17 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd
18 (c)), is further amended by revising the second sentence
19 thereof to read as follows: "With the exception of endan-
20 gered species listed by the secretary pursuant to section 4
21 of the Endangered Species Conservation Act of 1973,
22 nothing in this Act shall be construed to authorize the Secre-
23 tary to control or regulate hunting or fishing of resident fish
24 and wildlife on lands not within the system."

25 (b) Subsection 10(a) of the Migratory Bird Conser-

1 vation Act (45 Stat. 1224), as amended (16 U.S.C. 715
 2 i(a)), is further amended by inserting "or likely within
 3 the foreseeable future to become threatened with" between
 4 the words "with" and "extinction".

5 (c) Subsection 401(a) of the Act of June 15, 1935
 6 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is
 7 further amended by inserting "or likely within the foresee-
 8 able future to become threatened with" between the words
 9 "with" and "extinction" in the last sentence thereof.

10 (d) Subsection 6(a)(1) of the Land and Water Con-
 11 servation Fund Act of 1965 (78 Stat. 903), as amended
 12 (16 U.S.C. 4601-9(a)(1)), is further amended by insert-
 13 ing "or likely within the foreseeable future to become
 14 threatened with" between the words "with" and "extinc-
 15 tion".

16 REPEALS

17 SEC. 12. (a) Sections 1 through 3 of the Act of
 18 October 15, 1966 (80 Stat. 926, 927), as amended (16
 19 U.S.C. 668aa-668cc), are hereby repealed in their entirety.

20 (b) Sections 1 through 6 of the Act of December 5,
 21 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through
 22 668cc-6) are hereby repealed in their entirety.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., May 25, 1973.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1592, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The President, in his State of the Union Message of February 15, 1973, on Natural Resources and the Environment, stated that the limited scope of existing laws requires new authority to identify and protect endangered species before they are so depleted that it is too late and that he would ask the 93rd Congress to direct its attention to this problem. The Administration's proposal is contained in S. 1592.

In view of the foregoing, the Department recommends the enactment of S. 1592.

The Department was advised by the Office of Management and Budget that there was no objection to the submission to the Committee on Merchant Marine and Fisheries of a similar report on H.R. 4758, an identical bill, and that enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., June 5, 1973.

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of May 15, 1973, requesting the Department's comments on S. 1592, a bill to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

The legislation was transmitted to the Congress in conjunction with the President's State of the Union Message on Natural Resources and Environment of February 15, 1973. This Department strongly supports S. 1592.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 1592 would be in accord with the Administration's program.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

Senator STEVENS. Mr. Bohlen, Deputy Assistant Secretary for Fish, Wildlife, and Parks, the representatives of NOAA, Mr. Schonning, Mr. Brennan, and Mr. Blatt, will you consent to being a panel?

Mr. BOHLEN. Mr. Chairman, could I bring a few people up to assist me, please?

Senator STEVENS. Certainly.

Mr. BOHLEN. I would like to have a few extras around me.

Senator STEVENS. You have a prepared statement. I hope in the interest of time that you can summarize it and we will place the full text in the record.

Mr. Bohlen, we will call on you to begin.

I might tell you gentlemen, my State is very much in favor of this legislation and I think that the Senate is very much in favor of the legislation.

I raised some questions last year before the bill was reported, and we got some specific answers. We did report that bill, but it did not get to conference where I thought we might be able to work some of these matters out. This time I hope we can work them out in advance, get some answers that we can demonstrate to the full committee the necessity to spell out these interrelationships in this bill so that there will be no misunderstanding in the future.

I really don't have any firm opinion as to which way the interrelationship should be spelled out, but I do think it ought to be very clear what is to be done.

Mr. Bohlen?

STATEMENTS OF E. U. CURTIS BOHLEN, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR, ACCCOMPANIED BY DOUGLAS P. WHEELER, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS; DR. EARL B. BAYSINGER, ASSISTANT CHIEF, OFFICE OF ENDANGERED SPECIES AND INTERNATIONAL ACTIVITIES; RICK PARSONS, SPECIAL AGENT IN CHARGE OF INTERNATIONAL INVESTIGATION, DIVISION OF LAW ENFORCEMENT, BUREAU OF SPORTS FISHERIES AND WILDLIFE; AND ROBERT W. SCHONING, ACTING DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE; JAMES W. BRENNAN, ACTING GENERAL COUNSEL; AND HERBERT BLATT, ASSISTANT GENERAL COUNSEL FOR FISHERY MATTERS

Mr. BOHLEN. Thank you, Mr. Chairman. I do have a prepared statement which in the interest of time I will be happy to submit for the record.

Let me just say in summary that the Department of the Interior has had a number of years of experience in administering the Endangered Species Acts of 1966 and 1969 and has found a number of areas where there are deficiencies, and where there are needs for greater authority and greater strength.

The administration's proposed legislation, S. 1592, we believe, resolves many of these problems. Essentially, it creates two categories of endangerment, the first being those that are presently endangered, and the second being those that are likely to become endangered in the foreseeable future, which some people refer to as threatened species.

We feel it is very important that we have the authority to take action in time to help a threatened species before it becomes truly endangered.

I would be happy to answer any specific questions you have, Mr. Chairman.

Senator STEVENS. Would you identify for the record the people who are with you, Mr. Secretary?

Mr. BOHLEN. On my right I have Deputy Assistant Secretary Douglas Wheeler. To his right Dr. Earl Baysinger, Deputy Chief of the Office of Endangered Species. And on my left is Rick Parsons,

Division of Law Enforcement, Bureau of Sports, Fisheries, and Wildlife.

Senator STEVENS. Who are the people with you, Mr. Schoning?

Mr. SCHONING. I am Bob Schoning, Acting Director of National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

On my immediate left is Mr. James W. Brennan who is acting general counsel of NOAA and on his left is Mr. Herbert Blatt who is assistant general counsel for fishery matters.

Senator STEVENS. Do you have a statement, Mr. Schoning?

Mr. SCHONING. Yes, I do, sir. I will enter it for the record in the interest of time and be prepared to answer any questions.

Senator STEVENS. Thank you very much.

It is my understanding that following the Marine Mammals Act of 1972 there were States that reduced their financial support for enforcement activities pertaining to marine mammals. I would be happy to correct the record if I am wrong, but one of them I understand was Florida.

I would like to know if as a result of this legislation there is going to be any preemption of the powers of the States to regulate or enforce any State law concerning species or subspecies that may become endangered with the result that the State legislatures will again reduce the moneys that are available for enforcement in the States.

Do you have an opinion on that?

Mr. WHEELER. Of course, Mr. Chairman, we could not venture a guess as to how the States might react to any of these proposals, but, as you know, the administration legislation, both in the last Congress and this Congress, does provide for Federal regulation of taking within the States, an area heretofore reserved by the States with respect to resident species.

As we pointed out in our legislative report to committees of the House and Senate last year and this, we believe this is a necessary concomitant of the authority to list endangered species and to protect them.

We have a situation where in some States those species listed by the Federal Government as being endangered are actually being taken.

To the extent we would prohibit the taking of animals listed, we are in effect preempting that authority of the States.

I would go one step further, however, and I think this is very important: The Administration proposal contains provision that the regulations which would prohibit the taking of such species be suspended in those States where the States have analogous regulations and have entered into management programs for the protection of those species.

Senator STEVENS. I am glad you mentioned that because that is one of the reasons I raised this.

My State has, I think, more than 20 times the number of State enforcement officers than Federal officers. We have been forced out of the ocean mammals business under the Marine Mammal Protection Act. If we are going to treat all 50 States the way Alaska has been treated under the Marine Mammals Act, I think I would try to delay this legislation.

Mr. WHEELER. Let me say it is our intent, certainly, to encourage the States to participate in this program and that the Federal Government recognizes it has neither the inclination nor the where-withall to accomplish endangered species management programs in every one of the 50 States.

Senator STEVENS. With due respect, those 50 States have had management programs for a long time before you people even thought of that.

Mr. WHEELER. Indeed they have had.

Senator STEVENS. The problem is we are now put in the position where in order to have the State laws to continue to be effective, someone on the Federal level has to certify that the State laws are OK.

That doesn't bother me. But what bothers me is there is the delay factor, there is no deadline for your action, and if I am informed correctly as to what happened in Florida, the marine mammals in captivity in Florida today have less attention than they had before the Marine Mammals Act passed.

I am reliably informed there is a person who visited those marine mammals once a week when it was under the State authority, and following the enactment of the Marine Mammals Act their support was cut off by the State legislature.

If that happened in Florida, and I can only say that is how I am informed, then why isn't that going to happen under this act in all 50 States with regard to the resident species?

Mr. BRENNAN. If I might comment on the Florida situation, I believe that shortly after enactment of the act the Florida officials assumed that their authority had been preempted. In fact, the State laws still apply to any marine mammals taken prior to the effective date of the act.

We have had discussions with the State of Florida about this problem and I understand that they are still visiting the aquaria, et cetera, with respect to animals taken before the act.

With respect to animals taken after the act, we have entered into an arrangement with the State of Florida to assure that the State enforcement officers on the scene will be able to enforce the provisions of the Federal law.

I think that initially there may have been a period of uncertainty and perhaps misunderstanding, but I don't believe that continues today, Mr. Chairman.

Senator STEVENS. Let me put it this way: have you approved under the Marine Mammals Act the State laws of any State pursuant to the regulations that you issued under that act?

Mr. BRENNAN. No; we haven't, Mr. Chairman, but we have entered into arrangements with several of the States so that the States will assist us in enforcing the Federal law.

Senator STEVENS. So that in effect, if you will pardon me for putting it this way, the sop that was extended to those of us who wanted State laws recognized, that you would recognize through the approval process, has not been followed at all in that case?

Mr. BRENNAN. I believe we have had only one application, that is from the State of Alaska, for approval of their laws.

Senator STEVENS. Florida has not made application? I was informed that they have.

Mr. BRENNAN. I don't believe we have received one, Mr. Chairman. There have been some tentative discussions, but we haven't received an application from the State of Florida.

Senator STEVENS. Would you provide for the record the number of enforcement people that were in the State of Florida before the passage of the Marine Mammals Act and the number that are funded now?

Mr. BRENNAN. Yes, sir, we will be glad to.

[The following information was subsequently received for the record:]

FISH AND WILDLIFE ENFORCEMENT OFFICERS IN FLORIDA

At the time the Marine Mammal Protection Act of 1972 became effective on December 21, 1972, there were in the State of Florida, 160 marine patrol officers and 184 enforcement officers of the Division of Game and Fresh Water Fish, making a total of 344 State officers involved in game and fish enforcement. At the same time, there were six agents of the Bureau of Sport Fisheries and Wildlife, Department of the Interior, and one agent of the National Marine Fisheries Service, Department of Commerce, stationed in Florida for a total of seven field agents.

At present, the Florida marine patrol has 175 officers while the Division of Game and Fresh Water Fish has 203 officers for a total of 378 State officers.

The Bureau of Sport Fisheries and Wildlife has six agents and the National Marine Fisheries Service has three agents for a total of nine Federal agents.

Senator STEVENS. As I understand this legislation, gentlemen, we are saying that there is a new category of control, and that is in the area of those species or subspecies that are in danger of becoming endangered species, and that those species, if they are listed, would become subject to Federal control; the States could still have operating area under approval of their laws by your agencies. Is that your understanding?

Mr. WHEELER. I am not sure that I understand the question, Mr. Chairman. The law does provide for two categories: the first actually threatened with extinction, and the second likely in the foreseeable future to become so threatened.

This recognizes the pattern recently adopted by the international convention.

With respect to the sanctions and the regulations applicable in each case: In the first, those actually threatened with extinction, the sanctions would be much the same as they now exist with the addition of a prohibition against taking.

With the second category, the Secretaries respectively responsible for those species would have a matter of discretion the opportunity to impose those regulations, including sanctions imposed with respect to the first category, as are appropriate to an individual case.

There is a new provision in this law, very important, I think, that when listing the animal, the Secretaries must both list whether it falls in the first or second category, and second, in what range or in what portion of its range that condition exists, allowing the Secretaries to impose regulations appropriate to the specific range of a specific animal without having to find it endangered throughout its entire range.

This will act, we hope, as an incentive for those portions of the country and the world where species are not now endangered to protect them, to prevent them from falling into either category, and to

acknowledge the efforts of those countries which have afforded protection to endangered species.

Senator STEVENS. Don't misunderstand me. I am sure, and I feel the committee agrees, that it is very desirable to have early identification of these endangered species and thorough protection for them before a species is so depleted that it would become extinct. I don't know anyone who is arguing against that.

Can you tell me what criteria have been developed by your agencies for identifying these categories of species and subspecies?

You agree it also covers subspecies?

Mr. WHEELER. Yes, indeed.

Senator STEVENS. Let me add another thing beyond the criteria. Do you believe it would cover stocks as opposed to species or subspecies?

Dr. BAYSINGER. By stocks, if you mean the isolated population segment or a smaller identifiable group of animals, the population per se, I would say yes, it would.

Senator STEVENS. It could cover an area within the State, for instance?

Dr. BAYSINGER. That's correct, yes.

Senator STEVENS. What criteria have we recommended for identifying those three categories, and how are we going to convince a State like mine, for instance, one-fifth the size of the United States, if you decide to regulate Sitka deer down in the Southeast, who is going to regulate it up in Kodiak and up in the interior of Alaska?

What criteria are you going to use to determine that the Federal Government ought to preempt in terms of those three categories: Species, subspecies, and stocks?

Dr. BAYSINGER. Correct me if I don't cover all the questions. I will just start off, and we will take it from there.

As far as the determination of species, subspecies, and stocks, the determination of species and subspecies can be handled quite adequately by the taxonomic literature.

These animals are identified and presumably identifiable.

When you get into the question of stocks or populations, there you are getting into a more vague definition and one that is going to have to rely in large part on the best professional information we can get.

NOAA may expand on this, as to what whale populations are stocks and which are emerging populations or populations that are part of one another.

Some would apply to migratory species. The Canadian goose is divided into numerous populations.

So the population will be a gray area. We are going to have to rely quite heavily upon the scientific community and especially the various State conservation agencies. They all have expertise in this field.

In determining whether an animal is threatened or whether it is actually endangered, and for ease of discussion, we will simply call these list 1 and list 2; we are dealing with a matter of degree.

An animal in most cases would become threatened—correction, would become likely to become threatened before it becomes endangered unless proper action were taken. So again it is going to be important, I think, for the Secretaries to establish good rapport with the scientific community, with the various States, and the other agencies.

Whether a species has crossed that line between list 1 and list 2 is going to be a matter of relying in large part on the best professional judgment we can get.

There are some cases it would be quite obvious, such as the whooping crane. The blue whale, nobody would argue with. When you get into other creatures, you can see them headed down the path toward endangerment, and it is a matter of where you draw the line.

So this is a series of techniques, a series of contacts, that will be developing.

Senator STEVEN. Where do the States come in, in regard to this? If you have a situation in Alabama where you have stocks that are subject to severe pressure and there is no similar pressure in the West or in Alaska, how are we going to have a criteria for determining where the limit of Federal jurisdiction begins and where it ends?

I think this is what the States want to see.

Do you have any participation, for instance, with the States in making this determination?

Dr. BAYSINGER. Yes. At the present time, we are making use of authority provided under the existing law. For example, we are now reviewing the status of several animals that appear to be candidates for our existing list of endangered native fish and wildlife. We now have letters out to the various States in which these animals occur, asking their opinion and asking for a compilation of their data.

Such consultation would be enhanced considerably under the new law.

In other words, it is going to be a closely related working operation with not only the States but with the scientific community as well.

We recognize that we are not the fountain of all knowledge and we are going to have to rely quite heavily on these people for their input.

Senator STEVENS. Would you point out to me in the administration's bill where there is any role for the States making that determination?

Mr. WHEELER. It appears in section 2(c)(1) of the administration bill.

I would like to bring the committee's attention to other provisions of the bill having to do with our relationship with the States.

In section 4(e), the section concerning existing State regulations—

Senator STEVENS. I am trying to find this 2(c)(1).

You say "After consultation with the affected States and in co-operation with the Secretary of State."

This is martial law in the fish and wildlife area. You are usurping the power of the State management agencies by this bill on the basis of determination by someone on the Federal level, and I think it ought to be well defined.

In the Alaska statehood bill there is a way that the Federal Government can impose martial law short of war in Alaska. This is what you are doing. You are taking away from the States their prerogatives under existing constitutional guidelines on the basis of a finding by somebody, and you say it is just consultation that is involved.

Don't you think somehow the States ought to have a more defined role than just consultation if you are going to do away with the product of years and years of their State legislatures and their fish and game agencies and their enforcement authorities?

Mr. WHEELER. Quite frankly, Mr. Chairman, it is our hope and, in fact, this legislation was drafted with the intent that those States which now have programs for effective management of the endangered species would not be affected.

Senator STEVENS. Who makes that determination?

Senator COOK. It doesn't say so here. That is the problem.

Mr. WHEELER. I would call your attention to section 4(e), Mr. Chairman and members of the committee, which appears at page 10 of the print that I have, and I will read specifically the second sentence."

This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish and wildlife.

The first sentence addresses itself to those States where provisions of law are less restrictive than those which would be imposed by the Congress of the United States if this legislation were enacted.

Senator STEVENS. I am looking for the criteria to be set up by the Congress of the United States, and I would like to write it in here.

I think we have got to get some standards in here. This is strictly administrative fiat right now.

You say it is the subject of the first sentence in subsection (e) on page 10, but I don't think it is constitutional as a matter of fact. I don't think you can preempt the State law without having some legislative guidelines right in the law itself which require a certain finding before that State law becomes void.

I am trying to help you. I think I am a pretty good lawyer. I know my State wants this bill, but I want it to be effective and I don't want to have to spend the next 5 years of my life arguing as to whether they are right or you are right on particular species.

Mr. WHEELER. I can understand that. I think we sympathize with that objective. Certainly our objectives are the same.

I wonder if we are talking about criteria for listing animals or the criteria for the case in which State laws are suspended or preempted.

Senator STEVENS. It is automatic once you list it, isn't it?

Mr. WHEELER. No, not unless it is less restrictive than the prohibition against taking that appears in this legislation.

Senator STEVENS. What is less restrictive? Is it less restrictive if we have certain seasons for resident species? What is more restrictive and less restrictive? That is the subject of an argument right now, as I understand it.

Mr. WHEELER. I think it is indeed. As a case in point, however, if you have a first-class or threatened species, this law would prohibit its being taken within the jurisdiction of the State of Alaska. If the State of Alaska—

Senator STEVENS. Wait a minute. Only if you don't designate less than the whole State.

Mr. WHEELER. Well, within—

Senator STEVENS. What is the criteria for making that determination?

Mr. WHEELER. Within the area designated as that portion of its range in which the condition of endangerment exists, that's right.

But let's assume for argument's sake that we are talking about the entire State. If we find there is a first category endangered species, this law would prevent the taking of that species within the State.

Senator STEVENS. We don't argue with that.

I am talking about the next category, those who are likely to become endangered. That is the area where we are going to have the fight. That is the area where if you void State law, we are going to be in real difficulty?

Mr. WHEELER. We do not void State law *ab initio* in that case, Mr. Chairman. The section that has to do with the regulation of taking would pertain only to the first category of species at the outset. So, Federal regulations affecting the second category are discretionary.

Senator STEVENS. It is not my understanding. Let's go through that.

Does counsel agree with that?

Mr. WHEELER. I am referring to section 5(c).

Senator STEVENS. As we understand it, under section 3(b) if the Secretary makes a list of species or subspecies which is likely within the foreseeable future to become threatened with extinction, he should issue regulations. If you go on over to page 10, "Any State law or regulation is void to the extent that it would effectively permit or prohibit imports, exports, or transactions in interstate commerce or foreign commerce in a manner inconsistent with subsection (a) hereof, or regulations issued under authority of subsection (b)."

Aren't you in effect suspending State law, making it void under this concept of those species which are likely within the foreseeable future to become threatened?

Mr. WHEELER. That's correct.

Senator STEVENS. What about the criteria of what is the foreseeable future? What is the foreseeable future to you?

Mr. WHEELER. Dr. Baysinger can answer that question from the scientific standpoint. I would say we have in practice identified two categories of species; those we know beyond reasonable doubt to be threatened with extinction at this time and those which, with respect to all available scientific evidence, are heading in that direction. Our failure to take some action would result in their reaching that first category of endangerment.

Senator STEVENS. Is it within a year, 10 years, or the lifespan of the particular species? What is the foreseeable future?

Again I think you ought to go to your lawyers and get to the problem of what are the constitutional standards for voiding State law.

Mr. WHEELER. Let me ask Dr. Baysinger to respond to that question with respect to the foreseeable future.

Dr. BAYSINGER. This again, Mr. Chairman, is frankly going to bring into play a great deal of best scientific judgment.

It is extremely difficult when you look at the broad spectrum of animals that we are dealing with to lay down a time frame, a specific date upon which you can look at what is happening to an animal or what is happening to a population and make a prediction that on a given day that animal is going to cross this line we are talking about.

So again it is going to be a matter of looking at the status of the animal, taking the best data that are available, establishing a good

working relationship with the scientific community, other management agencies, and then making a decision: Is the animal now threatened with extinction, or is it quite obviously heading that way unless certain things that this law would enable us to do were brought into effect?

Senator STEVENS. With due respect, if I may interrupt you, we are not talking about the whole species.

If you were, I think I would have a different feeling about that. You are talking about species, subspecies and down to isolated stocks which, as I understand, would mean that in the hills of Pennsylvania you could have some problems with regard to a particular stock of a subspecies of a species that is in very great supply in the whole United States.

Dr. BAYSINGER. This is true.

Senator STEVENS. We have got to define where the limit of Federal authority is going to be under those circumstances and to do it constitutionally.

I want to protect them. Don't misunderstand me. I would like to see those stocks protected.

But, I would also like to see it done constitutionally and in a way in which the State authorities can know what their role is when somebody makes the determination that those stocks are likely to become endangered in the future, and if they do, that could lead to a further attenuation of this subspecies and the species within the United States.

Are we on the beam?

Dr. BAYSINGER. Yes, sir; I see the question that you are raising.

I feel, however, that if there is an honest and workable rapport between the agencies involved and the scientific community that these decisions can be made and will be made in a rapid manner.

Senator STEVENS. My basic question is, where is the role of the States in that procedure that is going to void State law, and where is the criteria for setting up the determination of what are stocks, what are subspecies, and what is the interpretation of foreseeable future?

I think there are so many questions left in it that you have got an unconstitutional bill.

I would like to see if there isn't some way where we can have Congress define what is the foreseeable future. It might be different for elephants than it would be for some other animal, but I think someone has to put the criteria in the bill.

Is it the lifespan?

Would the lifespan of an individual member of that stock determine the foreseeable future?

Dr. BAYSINGER. I think, again speaking biologically rather than legally, the difficulties in determining the "lifespan" of most wild creatures would be extreme. We can come up with average lives and things of this sort. But, setting criteria like that in legal language—and I am speaking now not as a lawyer, as my expertise does not lie in that field—is going to be very difficult. It is somewhat like trying to legislate morality; it is an extremely difficult thing to do, very desirable I would admit, but I feel we are going to have to rely at some point on best scientific judgment.

This is what we would hope to do.

Senator STEVENS. I know people that think that any hunter who kills any game, resident species, is a murderer.

These people are involved in the Federal Government as well as that State government as well as in the organizations represented here.

I don't happen to agree in regard to hunting for animals that have food value and are part of the game, unless they are either endangered or likely to become endangered.

How are we going to keep the people who bear that point of view—and I don't say you do or you don't—how are we going to get the people who bear that point of view from using this bill to stop all hunting?

I think the only way it is going to happen is if you have an effective role of the 50 State fish and game agencies in these determinations that are going to affect the definition of game in their States.

Mr. WHEELER. I think we agree with that, Mr. Chairman. As I have tried to indicate, the bill makes several provisions for cooperation and consultation with the States.

With respect to the question of criteria, however, it is quite clear in the present law—and let me say we haven't encountered these difficulties with respect to the present law—and with respect to the proposed law, there are very clearly stated criteria in section 2(c)(1) as to what constitutes or what would cause a finding by the Secretary. We are fully conscious of the fact that his decision to review, to list or unlist, to classify in one category or another, would be subject both to public scrutiny and to scrutiny by the courts in the event he acted in abuse of discretion.

For that reason there is adequate provision for public hearing in this bill, both with respect to review and delisting, let alone the fact that it requires consultation with the affected States, and let alone the fact that it specifies the criteria that he would be using in making his determination.

Senator STEVENS. With due regard for what you see in (c)(1) as I understand it, these small subclassifications listed on page 3 of the administration's bill deal with factors that are contributing significantly to the finding that these species are likely to become endangered.

They do not deal with what I would call basic findings that must be made before such a list is made. These are, for instance, "destruction, drastic modification, or severe curtailment or the threatened destruction, drastic modification, or severe curtailment of its habitat"—I can understand that.

What does that have to do with what is going on in Florida or what is going on in California?

This bill would permit you to stop hunting in California because you made that finding in Florida.

Mr. WHEELER. No, sir, exactly the opposite.

This is exactly the point that we are trying to make; for the first time, under the authority of this bill, we would be able to fine-tune to the extent that we could prohibit the taking in that area where this condition of endangerment exists, and not in others.

The law presently requires that we find a species to be endangered throughout all of its range. We are not able to say that in Florida it exists but in Alaska it does not.

Senator STEVENS. I want you to have that. I want you to have that even if it is in Alaska and not Florida.

Mr. WHEELER. Or California, or Wyoming, or Nevada.

Senator STEVENS. Where is the criteria for making that determination in the bill?

What is a range?

What is foreseeable time?

I am getting redundant. I don't think you have got the criteria in this bill for it to be suspended.

Do you disagree with me, Senator Cook?

Senator Cook. My problem is, I am looking at the fact, for instance, in the State of Utah you are entitled to one swan. On the east coast, you cannot hunt them at all. I am sorry you are hunting them in Utah.

Are you telling me under the authority of this bill, that prior to that time if you decided that the swan was an endangered species that you had to do it on a nationwide basis because if, in fact, up to this time you had a degree of authority, how come we have this discrepancy throughout the United States, or has this been on the basis of State law?

Mr. WHEELER. On a technical point, our authority with respect to the swan is provided by the Migratory Bird Treaty Act and not the Endangered Species Conservation Act. The swan is not listed now as an endangered species.

Senator STEVENS. What if it were threatened?

Mr. WHEELER. It could not be listed until we found that it was endangered throughout its range.

Senator Cook. Under the existing authority?

Mr. WHEELER. Under the existing state of the art.

Senator STEVENS. Couldn't you make that finding right now with respect to swans?

Mr. WHEELER. We don't have authority to recognize a second category under the present law. We recognize only one degree of endangerment; that is threatened with extinction.

Senator STEVENS. If this bill is passed, don't you think you could make a finding right now if you had sufficient criteria to do it, that swan hunting ought to be stopped?

Dr. BAYSINGER. First to Mr. Cook's question—

Senator Cook. Also apply this to sand cranes.

Dr. BAYSINGER. If we were to find that the whistling swan was threatened within the territory of the United States, under the present law we would have to apply that endangered category to the swan throughout its range wherever it occurs, whether it be Alaska, Utah, or Maryland.

Under the legislation that we are talking about today, we would be able to fine tune that and take a look at the swan if it were an animal about which we are concerned. The whistling swan appears to be in pretty good shape, but if this were an animal about which we were concerned, that was obviously getting in trouble on part of its range, for whatever reason, we would be able to sit down, look at the animal, determine with the other agencies with whom we are dealing what actions are needed to prevent that animal from deteriorating to the

point where it would become endangered, make the finding that this animal is likely to become threatened over a portion of its range, and then apply such techniques as would be needed to prevent it from deteriorating further within that portion of its range.

We don't have the authority under the existing act.

Senator COOK. In other words, S. 1592 gives you a degree of selectivity that you never had before?

Dr. BAYSINGER. Yes. It gives us a scalpel rather than a broad sword.

Mr. BRENNAN. I should also like to add that the present act, as I understand it, has two categories of endangerment, worldwide and local species, but there is no provision for preventing the taking of any endangered species. I think that the prohibitions of the act as presently written go to the importation of these species but not taking domestically.

Senator COOK. Mr. Chairman, here is the thing that bothers me. The Marine Mammal Protection Act of 1972 was an administration bill that was sent up here—

Mr. WHEELER. May I correct that, it was not an administration bill.

Senator COOK. I thought that it was. I supported it.

Mr. WHEELER. We supported another version of the bill that was finally passed without the provision that I think you are about to address.

Senator Cook. No, I am not.

Here is what bothers me. If you didn't support this one, you did have a bill in, and it just seems to me that you knew something was coming and we find ourselves in the position that you were totally unprepared to do anything about it.

Relative to this act right now, I would like to know what kind of a budget you have at NOAA and at Interior to really put this thing into effect, when you are ready for it.

If you get S. 1592, are you really going to be ready for it, or are we going to have that void between the Federal Government and the States where you have that lapse of time?

The treaty that goes before the Foreign Relations Committee in a few days is obviously going to come out of the Foreign Relations Committee, and is obviously going to pass identifies species that will be hunted to extinction between now and the time that treaty goes into effect.

The point is, if you are going to get S. 1592 and the only thing you talk about in your statement is that you say you will consult with the affected States, what kind of a position are you really going to be in to put it into effect when it becomes law, or are we going to regulate around for a year or 18 months and find that the activities of the Federal Government just creates a greater problem, and that it doesn't solve a problem?

Mr. BOHLEN. Senator Cook, maybe I could address that. I am bothered by the continual comparison between this act and the Marine Mammal Act. We did not at any point support the Marine Mammal Act as it is now written. In fact, that act in the way it is written has created severe problems for us.

Had we had our druthers, there are sections that would have been considerably changed.

As you know, one of the sections provides for the Marine Mammal Commission, and virtually nothing can be done under that act until the Commission is in being.

Senator COOK. By the way, is it in being?

Mr. BOHLEN. It is now in being by appointment, but not yet functioning.

There are many interrelationships in that bill, many legal interpretations that have been extremely difficult for us.

In the case of the Endangered Species Act, we have been working for several years, and I believe our lawyers have gone over it and over it until we think we have taken every legal precaution that we can take.

Granted you are never going to be able to spell out all the criteria that might be required. You have to rely on best scientific judgment to a great extent. But we have in the last 2 years greatly expanded our endangered species office, and we have increased the budget.

For fiscal 1974, we have a budget of \$4.3 million for endangered species. This is \$2.3 million more than we had in fiscal 1973. So I think to answer your earlier question, we are prepared to move right ahead in this whole area.

Senator COOK. What do you propose to ask for in the present budget that is before us?

Mr. BOHLEN. For fiscal 1974, we have \$4.3 million.

Senator COOK. What are you going to ask in 1975?

Mr. BOHLEN. That is one of the issues that we have before us next week in the Department. We have a meeting on that very subject. I am sure we will ask—

Senator COOK. If you come to a budget item in that meeting next week, and I am sure this record would still be open, I wish you would let us know just exactly what the departmental range is.

Mr. BOHLEN. We would be happy to submit a breakdown of the expenses we anticipate this year and next year.

[The following information was subsequently received for the record:]

ESTIMATED COST TO THE DEPARTMENT OF COMMERCE FOR CARRYING OUT PROVISIONS OF THE ENDANGERED SPECIES ACT OF 1973 (S. 1592)

The anticipated cost to the Department for carrying out this Act will fall into two categories: (1) management, including enforcement and surveillance; and (2) research. The estimated costs for management would range from zero in the first year (FY 1974) to approximately \$.6 million in the fifth year (FY 1978). The estimated costs for research would range from zero in the first year (FY 1974) to approximately \$2.05 million in the fifth year (FY 1978).

The cost figures for management, including enforcement and surveillance, represent increases over the existing Department of Commerce budget for these activities. Present Departmental programs are related to domestic fisheries regulations and international agreements. These estimated figures have been based on anticipated management needs in relation to: (1) species of marine animals, especially whales, that are under the jurisdiction of the Department of Commerce and that are presently on the U.S. Endangered Species List; and (2) a limited number of marine species not presently listed. Obviously, these figures are subject to possible modification depending on the results of new scientific investigations. Such investigations may indicate that management requirements for these species are greater than anticipated or that a number of additional species should be added to the U.S. Endangered Species List.

The cost figures for research reflect an increase over present program levels to ascertain abundance and population trends incident to determining the status of living marine resources as "threatened with extinction" or "likely within the foreseeable future to become threatened with extinction". This Department will begin implementation of S. 1592 by using ongoing programs as applicable. By orienting these programs toward making the greatest possible contribution to new research requirements, we believe that a detailed groundwork for effective program expansion will be established by FY 1975. We expect to be able tentatively to identify some of the marine species which might fall within the two categories to be established by the bill by that time. Budgetary increases starting in FY 1975 would allow for research on those species. Such increases will be necessary because current programs deal with few species in these categories. Special studies will be required to develop data necessary for proper management and preservation of species which have been identified as "threatened" or "likely within the foreseeable future to become threatened".

The cost estimates for research anticipate an orderly expansion of existing marine resource assessment surveys, and ecological investigations in order to identify and develop conservation programs for threatened species as promptly as possible. This will also involve collation of current and relevant data from other potential sources.

In the long run, this Department's implementation of S. 1592 will continue to rest on a foundation of existing programs covering a broad spectrum of activities in both management and research, as reinforced by longstanding cooperative relations with States and private organizations and institutions.

Since the problems of endangered species in the marine environment are not well known as yet, all of these cost estimates will be subject to change with the acquisition of new information.

The figures listed below are an estimate of additional funds needed for management activities and for achieving the required level of research and assessment activity.

BUDGET AUTHORITY

[In millions of dollars]

	Fiscal year—				
	1974	1975	1976	1977	1978
Management.....	0	0.25	0.40	0.50	0.60
Research.....	0	1.15	1.45	1.75	2.05
Total.....	0	1.40	1.85	2.25	2.65

Senator STEVENS. Would you yield?

Senator COOK. Sure.

Senator STEVENS. Right at this point it is my understanding that there are about 5,000 State wildlife biologists and nearly 6,000 State law enforcement officers in the area that we are talking about of resident species. I would like for you to put in the record how many biologists you have in the Federal Government that are dealing with these species, not dealing with ocean mammals and all the other things in the Migratory Bird Act, but how many you have today comparable in the Federal Government to deal with the same problem, because I feel we are effectively setting up a position whereby administratively you could force those people right out of business and not have the money to replace them.

If the Federal Government wants to come in and assume the role of protecting all the species in the country and provide the wildlife biologists, provide the management people, provide the administrative money to do it, I haven't been informed of that. I am on the Appropriations Committee and I haven't seen any requests come in for that

kind of expansion in your area. As a matter of fact, you are cutting back.

Senator COOK. If you will add to that before he answers the question, how much do you anticipate you will have to increase your budget as a result of the passage of S. 1592?

Mr. BOHLEN. I think there is a basic misconception here that we are taking over from the States in terms of their biological expertise, and this is not the intent.

We have a relatively small staff compared to the States, both in terms of scientists and in terms of law enforcement officers. We view this as a partnership. There is no way that the Federal Government can take it all on and no way that the Federal Government wants to.

You mentioned the 4,000 to 6,000 agents that the States have for game management agents. I think one of the problems we face today is the vast majority of those are concerned with game animals and game fish, and they are not concerned with endangered species.

We would hope through cooperative programs to get the States to put more emphasis in this whole area of endangered species.

Senator STEVENS. I would like to add some amendments to give you a little more authority to grant to the States to improve what they are already doing. As a matter of fact, I am not satisfied with what they are doing.

I think there has been very small effort on the States' part as well as the Federal Government. But this bill in my opinion could force them out, just as my State was forced out of the ocean mammals business, and I think I can say we had more people involved in ocean mammals in Alaska than you have in the whole Federal Government. They have been sitting there 6 or 7 months to get a portion of the enforcement authority and it has not been approved.

Mr. BOHLEN. I can only agree with you that your State in terms of marine mammals has an excellent record of enforcement, many fine regulations, and it was never our intention that any of those be voided by legislation.

Senator STEVENS. My good friend, Mr. Secretary, I am not writing this bill all alone. The people who helped us write the ocean mammals bill are going to be involved here, too.

I think you should give us criteria to defend, to make sure that the States' authorities are not preempted without due unconstitutional consideration.

If I am wrong I would like to be corrected, but you still could issue a regulation which would give an administrative official the authority to exercise the constitutional prerogative of Federal supremacy.

Under this bill it does not have to be a regulation. It could be merely a finding purusant to a regulation that would suspend a State law.

Am I wrong, Doctor? If you make a finding that a species is likely to become endangered, then that finding itself voids the State law, doesn't it, under this bill?

Mr. WHEELER. I don't think that is correct, Senator Stevens. The legislation provides that the finding must be our finding that the species is either threatened with extinction or likely in the foreseeable future to become threatened.

Further, though, we must promulgate regulations which appropriately deal with that kind of endangerment we find to exist on the basis of the criteria defined by the law.

Senator STEVENS. It is still a finding pursuant to regulations that you offer which in effect void State regulation.

Mr. WHEELER. Void to the extent that State laws are less restrictive.

Senator STEVENS. What you are doing is shutting off State authority by that administrative finding. In effect you are voiding State law to the extent it is in conflict. Where are the standards for determining whether it is in conflict? Where are the standards, the criteria for making the finding?

I think as a lawyer unless you have them in the law what you do is not going to be constitutional because I don't think we can sit here as a Congress and delegate—with all due respect again to your biologists—to a biologist out in the field or wherever you are going to have him make this finding a chain of circumstances that voids the law of Kentucky or the law of Utah.

Let's take the crane law in Utah.

Mr. WHEELER. Of course, the Congress has already done that with respect to our authority to list species and to ban the importation of species where they interfere with—

Senator STEVENS. But you have to have a hearing and you have to have specific findings, and that is a different situation than to make a specific finding that the species is in fact endangered.

Mr. WHEELER. But those provisions are no different than the provisions of this bill.

Senator STEVENS. But you are coming into a new undefined category of what are species that are likely to become threatened with extinction. It is different from making a finding that they are threatened with extinction.

Mr. BOHLEN. Mr. Chairman, I completely understand and sympathize with the problem you are trying to get at. We wrestled with it at great length. I don't know that it is possible to write criteria into the law that will adequately cover every contingency. However, we have put in every degree of public participation and State participation that we thought we could put in and still leave the Secretary of the Interior some discretion here.

At the moment under the act of 1969 we are not required to hold public hearings to list a particular species. In this particular legislation we are increasing the public participation in every decisionmaking step.

As I said, I don't know how we can write precise criteria, but we do hope that we will have the eyes of the States and the eyes of the public constantly on us so that what actions we do take are done wisely.

Mr. BRENNAN. Mr. Chairman, may I make some comments from the viewpoint of NOAA on this?

As you know, the division of responsibility in the proposed endangered species bill is the same as you find in the Marine Mammal Protection Act with respect to the Interior Department and the Department of Commerce. In addition, of course, the Department of Commerce would have some responsibilities under the Endangered Species Act for certain fish. The Marine Mammal Protection Act has already taken the step of preempting some of the States' authority in

the area with respect to certain of the animals that we would be concerned with.

Our budget for 1974 contemplates \$1.6 million for enforcement and administration and research in the marine mammals area. I think there will be a very large carry-over from the research done in the Marine Mammal Protection Act to the activities that will be necessary under the Endangered Species Act.

The prohibition on taking under the Endangered Species Act is already essentially in effect, insofar as marine mammals are concerned.

I think all of the research that we are currently doing in cooperation with the States with respect to marine mammals under our jurisdiction would be very helpful in going forward quickly with the Endangered Species Act, if enacted.

May I make one other point because I think there may have been some misunderstanding with respect to the Alaskan question. The State of Alaska has come in under the Marine Mammal Protection Act for approval of a statewide management program for all species of marine mammals in Alaska. This program would involve harvesting and management of the species on a significant scale. The way the act is written, if Alaska had come in with a proposal to implement the moratorium, we would have been in a position of looking at it solely under section 109. Having management factors in their plan—and I think this is a correct decision on the part of the State of Alaska, to provide for appropriate management for marine mammals—we have to go back to the Marine Mammal Commission and get their concurrence because what we have to do under section 101 is to waive the moratorium that is currently in effect for those species which the State would propose to manage, and this requires consultation and public hearings. We, of course, plan to do this.

In view of the fact that the Marine Mammal Commission has only recently been appointed and is still not an entity that is completely able to function, we have been delayed in acting upon the request.

Senator STEVENS. I appreciate that explanation.

Senator Cook?

Senator Cook. One question. And it is a specific question because I want to get into this business of how we work within the framework of the bureaucracy, and particularly with the States as such.

We have a situation in eastern Kentucky of the primitive weapons area. There is no question about the fact that if this would give you a degree of selectivity, you could then make a finding within a very short period of time that the wild turkey is an endangered species within the State of Kentucky. I doubt seriously if you could even find 300 or 400 of them.

What do we do in the situation that we have had to fight over on this side for the last 3 years where the Corps of Engineers has made a determination because they built a new lake that they are going to put a road right through the primitive weapons area, right smack through the nesting areas of wild turkeys in that part of the country, and it is the only place where they are? What is the authority under this that you can prohibit the Corps of Engineers on an interagency basis from building the road?

The only way I have gone about it is to put an amendment in the public works bill that these fellows have to have an environmental impact study, and therefore, I have been able to hold it up.

Do we have authority under this act that immediate steps could be taken, that you can on a bureaucratic basis say to the Corps, this is out, you can't do it?

Senator STEVENS. We had that under the Fish and Wildlife Act of 1958. As we moved into this new era of Federal supremacy, we lost the control.

Mr. BOHLEN. There is a provision in the act, Senator, in section 3(d). I completely sympathize with your desires here. One of the most important aspects of safeguarding endangered species is to preserve their habitat. I think we need every legal tool possible to prevent undue destruction of such habitats.

Mr. WHEELER. Senator Cook, if I might just read the last sentence of section 3(d).

"All other"—and this is a change from the existing law—"All other Federal departments and agencies shall"—"shall"—"in consultation with and with the assistance of the Secretary, utilize in furtherance of the purpose of this act by carrying out programs for the protection of endangered species or subspecies of fish and wildlife and by taking such action necessary to insure that action authorized, funded, or carried out by them do not jeopardize the continued existence of endangered species."

Senator COOK. I find that language all right. I may have some amendments to put in that section.

The thing that bothers me is when the Corps of Engineers decided they wanted to build that road, they told all of us they didn't give a hoot whether we liked it or not, that is where the road was going to go.

There is no specific language in here that they have to take into consideration.

In other words, all they have to do is cooperate with you, and the action has to be taken by you, and the only way you are going to take it is either for the public or those involved to make you aware so that you can take action and notify them of that.

Otherwise, we could find out that it is already wrapped up and it is all done and the road is under construction and the funds have been granted and we are down the road. Then what do we do?

Mr. WHEELER. I think we share your concern about that, and to the extent this language does not meet the need, we would welcome your suggestions.

I just reiterate that section 3(d) for the first time would prohibit another Federal agency from taking action which does jeopardize the status of endangered species.

Senator COOK. You said you considered this, Mr. Secretary, as a partnership between the States and the Federal Government.

Mr. BOHLEN. Yes.

Senator COOK. I think we ought to spell that out in the bill, because in fact if that is the case, then you can be put on notice right away by the State authorities and by the fish and wildlife agencies in existence in the State of Kentucky that this problem exists there, and either they are going to make a report to you and you are going to accept that report or you are going to verify that report to see to it that action is necessary by you. But, if in fact you go on the basis

of the language on page 3 of consulting the States, the problem is going to be over and done and destroyed before you really can act.

Senator STEVENS. Let me raise the question of caribou. Caribou, they say, are not going to be able to live with the pipeline. I spent Saturday morning flying up the old line, and I watched the moose jumping over that line, living with it. It has been there for 40-some-odd years. But still the question was raised as to whether that action would endanger the caribou in their migration.

Mr. Secretary, are you telling me under your interpretation of this bill you could prevent the Interior Department from issuing a right-of-way permit for the pipeline because someone said those caribou would be threatened by that line?

Mr. BOHLEN. As you know, Mr. Chairman, the caribou are not endangered. Assuming they were endangered—

Senator STEVENS. If someone makes a finding under this bill that they are likely to become endangered because of a difference in their habitat, which is a nice pipeline going through it, are you saying that no Federal department can take any action contrary to this, that someone in your part of Interior could stop the Secretary of Interior, your boss, from issuing that permit?

Mr. BOHLEN. If the caribou was to be listed in the second category of endangerment as a threatened species, the Secretary may set such regulations as he deems necessary to protect that animal.

I suggest in the case you mention that there would be overriding interests—overriding consideration of national interests that probably would preclude him from saying that the pipeline should be stopped because of the caribou.

Senator STEVENS. That is very interesting. I will explore that a little further.

Again I want to come back. We are delegating as the Congress the authority for someone to make regulations which will again delegate the authority to whoever makes them to somebody else to make a finding that is going to void State law.

People can disagree with me, but I think that finding has to be subject to specific criteria in the law before they can be valid.

Do you have, for instance, a draft of regulations that you are prepared to issue pursuant to law if it is passed?

Mr. BOHLEN. No, sir.

Senator STEVENS. How long would it take you to get them up?

Mr. PARSONS. Senator Stevens, to the extent that you are talking about regulations that deal with species which are called endangered, that is, our first criterion—

Senator STEVENS. I am talking about the second.

Mr. PARSONS. The second would have to be drafted in a case-by-case manner, and that is as the statute contemplates.

We could issue basic regulations giving some criteria on how we get to that second list, and that could probably be done in very short order.

Given the bureaucratic process and the public notice procedure, which we generally go through, you are talking about a period of several months, being realistic.

But the specific regulations on each animal that you put on that second list would have to be developed as the information on that animal is developed.

Senator STEVENS. I am asking for the procedural regulations which would be the basis for your defense in the event that your action was attacked on a constitutional basis. I am interested in procedural matters.

What are the criteria that govern the finding by the person who is operating under the regulations, which I presume are issued pursuant to this proposed law?

Mr. PARSONS. To the extent that this can be pinned down from a biological point of view and would not be a case-by-case determination, the general guidelines would take us 3 to 4 months from the time that we initially start working on the staff level until the time we come to the regulations.

This is a basically normal procedure, and this would include at least 1 month of time for public comment and some hearings.

Oftentimes we find more time for public comment is appropriate.

Senator STEVENS. We have asked most of the questions we had. Could you get a determination by your respective agencies so we have in the record a clear statement of what is the interrelationship of this proposed bill, the administration's bill, to the Marine Mammals Act? Can you take any authority under this act to void any action taken pursuant to the Marine Mammals Act?

Suppose the Marine Mammal Commission would permit Alaska to start harvesting certain ocean mammals which we consider to be from a management point of view in an oversupply situation, could the listing of such an animal under this bill prevent the Commission from making that finding?

Mr. BOHLEN. Mr. Chairman, we would believe that any action would have to meet the requirements of both bills, and I don't believe the Commission on its own would make a finding without the recommendation of the Secretary.

Senator STEVENS. I take it, then, you do not object to an amendment which said that nothing in this bill would be interpreted to in any way alter, repeal, modify, or affect the actions taken pursuant to the ocean mammals bill?

Mr. BOHLEN. I think that is something that I would like to submit to you for the record.

Senator STEVENS. That is what I am asking.

Mr. BRENNAN. Mr. Chairman, I believe I agree with Mr. Bohlen's comment, that these are two separate acts, and that you would have to comply with both of them. It is perhaps a theoretical possibility that one might overrule the other in a given situation in the sense that you have to have permission under both to do a given act. But in fact it would be inconceivable to me that after the type of investigation that the Marine Mammal Commission and the scientific advisories would go through to waive the moratorium and make these findings under the Marine Mammals Act, that the same agency responsible for the same animal would turn around and make a decision that the animal was in fact endangered.

I think your comment is one that makes very clear, though, that the division of responsibility between the two agencies should remain

the same so that you have one agency making the determination about a given animal and you don't have two conflicting determinations.

Senator STEVENS. Again I would like to know specifically what is your position with regard to amendment to this bill which would say that nothing in this bill shall alter, modify, repeal, or in any way affect determinations made pursuant to the Marine Mammals Act of 1972?

Mr. BOHLEN. We will be happy, Mr. Chairman, to submit that for the record.

[The following information was subsequently received for the record:]

RELATIONSHIP OF THE MARINE MAMMAL PROTECTION ACT TO THE ENDANGERED SPECIES BILL

The proposed endangered species legislation, S. 1592, when enacted would impose requirements and prohibitions upon the taking, importation, sale, etc. of marine mammals which are determined to be either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. These requirements and prohibitions would be independent of but related to those under the Marine Mammal Protection Act of 1972. In order for a taking, importing, selling, etc. of an animal subject to the provisions of both S. 1592 and the Marine Mammal Protection Act to be legal, the taking, importing, selling, etc. must comply with the provisions of both.

It is for this reason that we urge that the provisions of the proposed endangered species legislation be consistent with the Marine Mammal Protection Act with respect to the taking, importing, selling, etc. of endangered marine mammals. Under the Marine Mammal Protection Act an endangered marine mammal may be taken in the following instances: (1) under permit for scientific research purposes; (2) by certain Aleuts, Indians, or Eskimos for subsistence purposes or authentic native articles of handicrafts and clothing, however, this may be regulated by the Secretary; (3) until October 21, 1973, by any person or class of persons exempted by the Secretary on grounds of economic hardship; or (4) until October 21, 1974, as incidental to commercial fishing operations, in accordance with regulations and after October 21, 1974, incidental taking may be allowed under permit. We believe that if provision is made for scientific taking, native taking, or economic hardship under the endangered species legislation, the provisions should be consistent with those found in the Marine Mammal Protection Act.

In order to promote the most effective enforcement of the Marine Mammal Protection Act and the endangered species legislation when enacted, it appears that in cases involving an animal subject to the terms of both, the procedures for the granting of a permit under each law should be combined where appropriate to avoid duplication of effort. In addition, the jurisdiction over endangered species must therefore follow the jurisdictional pattern established for the Marine Mammal Protection Act, which divides jurisdiction between the Department of Commerce and the Department of the Interior based upon the division of functions established by Reorganization Plan No. 4 of 1970. Under that Plan the Department of Commerce received responsibility for whales, porpoises, seals and sea lions, and the Department of the Interior for sea otters, walruses, manatees and polar bears.

The policies and programs of the Marine Mammal Protection Act and the proposed endangered species legislation complement each other. The objectives of the Marine Mammal Protection Act are to assure that no more marine mammals suffer such declines as to become subject to the Endangered Species Act. While both Acts would apply to a marine mammal which is determined to be endangered, any conflict that might arise should, in the opinion of this Department, be governed by the more restrictive conflicting provision.

We believe that the following provision should be added to the endangered species legislation in order to clarify the relationships between the provisions of the Marine Mammal Protection Act and the proposed legislation:

"Nothing in this Act shall be construed as relieving any person of any requirement set forth in the Marine Mammal Protection Act of 1972 and nothing in the Marine Mammal Protection Act of 1972 shall be construed as relieving any person

of any requirement set forth in this Act. However, to the extent practicable, the Secretary shall consolidate the procedures and requirements of this Act with similar procedures and requirements of the Marine Mammal Protection Act of 1972 insofar as they may apply to the same activities."

Mr. BRENNAN. May I ask for some clarification? By that do you mean that once permission is given under the Marine Mammal Protection Act that that would not affect it under the Endangered Species Act?

Senator STEVENS. I assumed we set up the Marine Mammals Act to deal with the whole problem of ocean mammals. They are in fact in a different category. As a matter of fact, you have more extreme authority than this bill as far as ocean mammals are concerned. We fought that battle. I lost part one of it. I don't want to get into it again.

I just want to make certain we are not having an end run by either side.

Mr. BOHLEN. As you know, Mr. Chairman, the Marine Mammal Act has several references to the Endangered Species Act of 1969, and I would hope that we could insure that this legislation dovetails very neatly with the Mammal Act so there is no conflict.

Senator STEVENS. I want to raise the question of Alaskan Natives. Alaskan Natives are in fact authorized under the Marine Mammals Act to continue until there is a specific finding with regard to the mammals that they use for their subsistence to continue hunting, and we are going to address ourselves specifically to the very touchy subject of the bowhead whale. That is continuing under the Marine Mammal Act until you follow certain procedures.

I want to know whether this act would authorize you to short-circuit those procedures by making a finding that they are in danger of becoming extinct and, therefore, shorten the procedure that we have already established for those that even though they are listed they may still be hunted by the Alaskan Natives for subsistence purposes only, not commercially.

Mr. BOHLEN. We believe, Mr. Chairman, we have enough flexibility in this proposed legislation to handle the instance you mentioned. I, for one, am completely sympathetic to the need for the Eskimos to take the bowhead whale as part of their annual ritual.

Senator STEVENS. Ritual? That is food. It is not ritual.

Mr. BOHLEN. It is both, subsistence—

Senator STEVENS. There is no religious ceremony.

Mr. BOHLEN. It is very much part, as I understand it, of their way of life, the annual bowhead hunting.

We would propose under the new legislation to handle it in this manner. As you know, the bowhead whale is now listed as an endangered species. Under the new legislation we would propose to put it under the first category for all areas except the Point Barrow region. Under our second category, we would propose to list the bowhead whale for that particular area of Alaska with particular provisions for the Natives to take the bowhead for subsistence purposes.

Senator STEVENS. You propose that?

Mr. BRENNAN. Mr. Chairman—

Senator STEVENS. Just a minute, Mr. Brennan, if I may follow through.

Suppose that someone else proposed the contrary. Under the Marine Mammals Act there is specific protection for my Alaskan Native people in terms of notice and findings, there is not that under this act. Which act would you be compelled to follow in order to cut off the rights of the Alaskan Natives for subsistence purposes?

Mr. BOHLEN. I would say since this act would be passing the Congress after the Marine Mammal Act, in that case it would override. That is why I am stating our Department's position for you on how we would proceed.

We would continue the exemptions for the Natives in regard to bowhead whales.

Mr. BRENNAN. Mr. Chairman, we would certainly take the Department of the Interior's proposal into account in making a determination on the bowhead whale independent of both acts. There is a very difficult problem here. If it is an animal that is likely within the foreseeable future to being threatened with extinction, then the problem is not quite of the magnitude that we would have if it were under the first category.

Senator STEVENS. They are already under the first category.

Mr. BRENNAN. I understand that.

Senator STEVENS. Worldwide, but they certainly are not in that area, at least so far as we know now.

I understand you have people working up there. They were making their findings. If you make the finding to place further pressure upon them, I am sure that you will limit them.

Since that isn't under your jurisdiction, that raises the question whether it is going to be under your jurisdiction under this new one. If you look at the regulations and the report creating the Arctic Wildlife Refuge and others, the Natives living in that area under subsistence circumstances can in fact hunt in those, although none of us could.

I would like to know does this law give you any greater authority to restrict their subsistence hunting than they presently have with regard to these species?

Mr. BOHLEN. To the best of my knowledge, Mr. Chairman, this would in no way affect those earlier acts.

Senator STEVENS. I again say that's one of the reasons that I would like to see our State involved, because our State is dedicated not only to protecting the game but also to protecting our Eskimos and our Indians. I would like to see something more than consultation with regard to an administrative decision that could be made by an individual here in Washington regarding species and subspecies that are in Alaska that would have no knowledge of the interests of the Alaskan Natives and that species or subspecies for subsistence purposes.

Do you have any further questions?

Senator COOK. No, Mr. Chairman.

Senator STEVENS. I appreciate your being here, gentlemen, though I would like to repeat one question that has gone through the whole thing, and that is the concept of criteria.

May I request further that you consult, each of you, with your solicitors and your general counsel in the case of Commerce, and have them indicate to us whether there are any specific criteria that

must be spelled out in the law that must be the basis for a finding that in effect results in the suspension or the voiding of State law.

Mr. WHEELER. Could I ask for further clarification on that, Senator, specifically criteria for what administrative action on behalf of the Department?

Senator STEVENS. Well, as I understand it, if this bill became law today, you could issue regulations that would authorize someone to make a biological finding concerning the pressure that would exist for one reason or another —

Mr. WHEELER. As to whether it is a first or second category species?

Senator STEVENS. Yes, first or second; and I think there is a third, here; and that is actually the isolated stocks. Any one of those, if that decision were made biologically, on a biological basis, you still have to have a procedural compliance with due notice, and due process, in my opinion, to void a State law.

This bill would void it on the basis of that finding. I think you should spell out in the law the criteria that govern that finding.

Am I being confusing?

Mr. WHEELER. I still have some difficulty, frankly.

The law would enable the Secretary to make a finding with respect to the degree of endangerment based on the criteria provided by the act, that is, either first or second category.

With respect to the first category, these sanctions, the prohibition against taking, imports, et cetera, would apply automatically by action of the law.

As to the second category, the Secretary would have discretion to impose certain regulatory measures necessary to that particular case.

Now, where in this procedure are we concerned about the criteria?

Senator STEVENS. Let me be a prosecuting attorney from Utah, and spell out the problem that I see:

You have a State law that permits the taking of swan. You could have someone in Utah that takes a swan following a determination by someone here in Washington that swans were in one of the three categories; and if it was the third it would have to be in Utah. If you voided the State law that permitted him to hunt, he then becomes subject to criminal penalty.

Along the line, you are going to have an attack on what you have done. I think in order to make that prosecution possible for someone who took a swan after a finding that either the stocks in Utah or the subspecies of swan that you are dealing with or the total species of swan were subject to anyone of the categories, you must have followed certain procedural safeguards as you went along.

I think you would have to have some notice to the States involved. I think you would have to have a hearing. I think you would have to have a specific decision that was in fact communicated to the areas involved.

I don't see that under this bill from a procedural safeguard point of view to protect constitutionality of the action you are taking.

If I am wrong, I would be happy to have you spell it out to me or have your counsel spell it out. But I do not see it.

To take the Eskimo that shoots the Eider duck, and we had this problem around in my days when I was solicitor of the Interior Department. They did in fact take Eider duck, and they were listed,

and the courts, as I recall, refused to prosecute them because there were no procedural safeguards that had been followed.

Mr. WHEELER. I think with that understanding we will be able to respond to your question.

[The following information was subsequently received for the record:]

CONSIDERATION OF CONSTITUTIONALITY OF PROCEDURES PROVIDED FOR BY THE PROPOSED ENDANGERED SPECIES LEGISLATION

Congress has the constitutional authority to legislate in the area of protecting endangered species, and the delegation of such authority to the agencies selected to enforce such legislation is proper. Furthermore, there is no constitutional requirement that criteria or standards for regulation be set forth in the statute itself, even in the situation where state laws possibly could be suspended or voided by such regulation. There is, however, an increasing tendency on the part of the judiciary to require administratively formulated standards and safeguards in the implementation of legislation. The provisions of the proposed legislation, S. 1592, are satisfactory in that regard and it would not be an unconstitutional delegation of power.

Section 2(c)(2) of S. 1592 provides that the provisions of Section 553 of Title 5 of the United States Code, governing rule-making procedures, will apply to any new regulations issued whether adding, removing or reclassifying species or subspecies that are either presently threatened with extinction or are likely within the foreseeable future to become threatened with extinction. Section 553 requires that the responsible agency provide notice and allow for public hearings or comments before issuing regulations. The only exclusion from this requirement is where the responsible agency is merely republishing an existing list of endangered species.

Section 2 of the bill also contains a provision which provides an additional safeguard wherein it allows for a petition to the Secretary regarding a review of a proposed addition to, removal from, or reclassification within the list of species or subspecies where there is substantial evidence to warrant such a review in the determination of the Secretary.

Senator STEVENS. Thank you very much, gentlemen; I appreciate your statements and your cooperation.

Again let me tell you—it is in the record of the last hearing—my State fish and game agency supports this bill. I support the bill. But I want it to work. I don't want it to get into the position where we are getting such a cloudy relationship between the State fish and game people and your people that we will be in a constant battle.

Someone came to my office with some amendments that are being drafted pertaining to specific cooperation with the States. If you have not got them, I will be glad to furnish them to you.

There is considerable worry, as I understand it, in the fish and game agencies concerning that aspect of this bill.

Gentlemen, thank you very much. We appreciate your appearance here today.

Mr. BOHLEN. Thank you, Mr. Chairman.

[The statements follows:]

STATEMENT OF E. U. CURTIS BOHLEN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR FISH AND WILDLIFE AND PARKS

Mr. Chairman, I appreciate this opportunity to appear before you on this important issue.

Legislation to amend the Endangered Species Conservation Act of 1969 was first proposed by President Nixon in his Environmental Message of February 8, 1972. As you are aware, Mr. Chairman, a bill was not enacted during the 92d

Congress. President Nixon reaffirmed this need on February 15 in his Environment and Natural Resources State of the Union Message. We urge this Committee to give favorable consideration to S. 1592, the Administration's proposed "Endangered Species Conservation Act of 1973."

Our bill follows closely the precedent established by the Congress in 1966 and 1969, when it enacted the first legislation to protect fish and wildlife endangered in the United States and abroad. The earlier legislation was the most comprehensive of its type to be enacted by any Nation. It reinforced the United States' position as a world leader in the field of wildlife conservation.

Mr. Chairman, the experience of the Department of the Interior in administering the endangered species program has pointed out deficiencies in the existing legislative authorities. We believe the provisions of S. 1592 will eliminate these deficiencies.

Our knowledge of the biology of endangered species and the factors contributing to the threats they face have increased tremendously in the past few years. The reduction in the number of species, either by direct or indirect action of man, has resulted in ecological instability, reduced man's freedom in choosing species for his utilization, and contributed to an impoverished quality of life. I know, despite our best efforts, that some species will be lost. Even though we may not be able to save all endangered species, we must make an effort.

One way to accommodate that effort is to act before a species reaches the level of being in imminent danger of extinction. I believe, and I am sure all of us concerned with today's environmental problems agree, that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Although it is imperative that we take immediate steps to prevent species presently threatened from joining the ranks of their extinct relatives, it is equally, if not more important that we not overlook other species whose populations have been reduced, but are yet threatened with extinction. They may become threatened with extinction if population levels are not monitored and other appropriate management activities taken as needed. For this reason we have defined "endangered" to mean any species or subspecies which is either presently threatened with extinction, or is likely within the foreseeable future to become threatened with extinction and over what portion of the range such condition exists.

Mr. Chairman, this Nation's lead in endangered species conservation has stimulated interest in other countries. The recently concluded Convention on International Trade in Endangered Species of Wild Fauna and Flora is a manifestation of this concern. This week the Senate Foreign Relations Committee will hold hearings on the Convention, and we look forward to early ratification by the United States Senate.

Agreement on the Convention represents a significant turning point in the history of endangered species conservation, and especially in international co-operation to achieve protection for threatened animals. Nations represented at the Conference—80 in all—determined to take the steps necessary to control international trade in certain endangered species.

Time has shown that even if one Nation acts to control its trade in wildlife as we did with the 1969 Endangered Species Act and the Lacey Act, the demand will merely move from that country to another. The Convention, once it is ratified and implemented, will go a long way toward international protection of endangered species. Our 1969 Endangered Species Act does not provide adequate authority for the United States to comply with the provisions of the Convention. However, we believe that S. 1592 is compatible. We are presently working with the Departments of Commerce and Agriculture and the Smithsonian Institution in developing language to implement the Convention.

A most unfortunate situation has occurred since the Convention was signed. The species listed in the appendices to the Convention are being used as a "shopping list." Species listed in the appendices are being commercially exploited. Unfortunately, this practice will continue until the Convention is ratified and all nations have enacted laws to provide comprehensive protection to threatened species.

Mr. Chairman, we urge prompt enactment of S. 1592.

Not only is it important that our laws are compatible with the Convention, but also we must have the authority to provide maximum protection to fish and wildlife that are presently in critical danger of extinction. At the same time we must be able to take such management and protective actions as may be necessary to prevent other species from reaching the critically endangered level.

Our Endangered Species Conservation Act of 1973 will provide this needed authority.

This concludes my prepared remarks. I will be glad to answer any questions you may have.

Thank you.

STATEMENT OF ROBERT W. SCHONING, ACTING DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. Chairman and members of the committee, we are pleased to be here today to discuss with you the President's initiative with regard to the protection, conservation and propagation of endangered species. We believe it may be appropriate to discuss some of the background and issues involved in the development of the Administration's Endangered Species bill. It must be noted that we are in the process of modifying our bill in order to fully implement the recently concluded Convention on International Trade in Endangered Species of Wild Fauna and Flora, but we have not yet finalized our position. Consequently, this morning we are not able to present the Administration's view on all the related issues.

The present Endangered Species Act does not provide the kind of management tools needed to act early enough to save a vanishing species. In particular, existing laws do not generally allow the Federal Government to control shooting, trapping, or other taking of endangered species. S. 1592 will fill major gaps in existing law to more effectively conserve and protect fish and wildlife.

Briefly, it will provide earlier identification of endangered species and authorize protective measures to be undertaken before a species is so depleted that its recovery is difficult or impossible. Moreover, it will make the taking of endangered species a Federal offense and it will expand the prohibitions against trafficking in such species.

S. 1592 is needed to reinforce NOAA's conservation activities. We are concerned about all aspects of the marine environment and the species which inhabit it and are involved in conservation activities to protect many of these species.

I would like now to discuss some of the important changes which will be brought about by this bill. The existing Endangered Species Act divides fish and wildlife into "native fish and wildlife" and "other fish and wildlife." For the present law to have any effect on native species of fish and wildlife, they must be found to be actually "threatened with extinction." In the case of "other fish and wildlife," one must find that a species is "threatened with worldwide extinction." Once these determinations are made, the Secretary of the Interior is given various powers to acquire lands and use funds to conserve, protect and restore the species. However, his powers to place restrictions on the taking of such species or any trafficking therein, are limited.

All that is required by the present law with respect to endangered species of native fish and wildlife is that the Federal agencies, in carrying out their activities seek to protect such species to the extent practicable. As to the other species of fish and wildlife, the Secretary's power is limited to forbidding imports. Clearly, the authorities of the present act are far too limited. Moreover, the act comes into play only when the species or subspecies is pushed to the brink. This is obviously unsatisfactory because it may be impossible for a species to recover when remedial action is too late. Extinction may be inevitable regardless of any protective measures man may take when the species is reduced to very low numbers.

S. 1592 removes the artificial distinction between "native" and "other" fish and wildlife so that maximum protective measures can be applied to all fish and wildlife to the extent that the United States can exercise jurisdiction. The bill retains the existing category of presently "threatened with extinction," and adds a new category of animals—those which "will likely within the foreseeable future become threatened with extinction." Moreover, it provides that action may be taken if either condition exists throughout a significant portion of the animal's range and does not require a finding of worldwide endangerment. This last modification recognizes the fact that a species or subspecies may be threatened because of events taking place in a small but significant part of its range.

As to a species or subspecies which is presently threatened with extinction, Section 4(a) of S. 1592 provides for a ban on the taking of such species or subspecies, its importation into or export from the United States, and on trafficking therein in interstate or foreign commerce for commercial purposes by persons sub-

ject to United States jurisdiction. Most of these acts are not prohibited under present law. At the same time, the bill contains appropriate exceptions to Section 4(a) prohibitions in order to permit taking for scientific purposes provided that certain criteria are met.

Section 4(b) authorizes the Secretaries to issue regulations for the conservation, protection, restoration and propagation of a species or subspecies likely within the foreseeable future to become threatened with extinction. This section gives the Secretaries full authority to issue whatever regulations may be needed to conserve and protect a species. And most importantly, this can be done at an early stage before any adverse trends have become irreversible. Where controls on taking are indicated, they can be applied. Where a moratorium or ban is preferable, it can be imposed. Upon meeting certain criteria, exceptions to Section 4(b) regulations may be made for certain scientific purposes.

We recognize that the new authorities sought will to some extent remove from the States certain powers over fish and wildlife which they now exercise. However, we believe that the fullest protection of endangered species can be effected by a uniform approach at the Federal level. At the same time it is clear that the States do have a legitimate interest in protecting fish and wildlife within their borders. We believe that for full and effective enforcement of regulations under the proposed bill, the full cooperation of the States will be needed. Thus Section 8 requires the Secretaries to cooperate with the States to the maximum extent practicable in carrying out the program envisioned by the bill and provides for agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species.

In concluded this statement, I would like to briefly summarize the recently negotiated Convention on International Trade in Endangered Species of Wild Fauna and Flora and mention the relationship between this Convention and these bills.

This treaty, which was concluded on March 3, 1973, controls trade in both wild animals and plants. For treaty purposes, trade includes the introduction of a specimen from the high seas. The protected animals and plants are listed in three appendices to the treaty: Appendix I includes species threatened with extinction which are or may be affected by trade; Appendix II includes species which might become endangered if trade is not controlled; and Appendix III includes a series of national lists of species which the listing nation feels should be subject to international trade controls in order to effectuate its conservation programs.

The treaty controls trade in the listed species by requiring the grant of export permits before a specimen can be either exported or imported. For Appendix I species there must also be the grant of an import permit (which may not be granted primarily for commercial purposes) before the transaction can take place. Similarly, a permit must be granted prior to any introduction of an Appendix I or II species from the sea. The grant of export permits is intended to be very restricted in the case of Appendix I. In the case of Appendix II specimens, permits may be granted for any purpose, but must be limited to appropriate levels. Export permits for Appendix III specimens are granted by each State which has listed that specimen.

The Convention establishes a Secretariat to gather data on the trade-control system, do studies, and perform other functions. In addition, there are biannual meetings of the parties to, among other things, oversee the functioning of the system, consider and adopt amendments, and review the status of the listed species.

As mentioned earlier, we are working with the Departments of Interior, State, and Agriculture and the Smithsonian Institution to identify those areas where modifications will have to be made in the Administration's bill in order to fully implement the treaty at such time as it is ratified.

Senator STEVENS. Mr. Grandy, Mr. Garrett, Mr. Jahn, and Mr. Gottschalk are here, as I understand.

Good morning, gentlemen. For the record, would you identify yourselves and the organizations you represent? Mr. Grandy, you start out.

STATEMENTS OF JOHN GRANDY, ADMINISTRATIVE ASSISTANT FOR WILDLIFE AT THE NATIONAL PARKS AND CONSERVATION ASSOCIATION; THOMAS GARRETT, WILDLIFE DIRECTOR, FRIENDS OF THE EARTH; LAWRENCE R. JAHN, VICE PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE; JOHN S. GOTTSCHALK, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF GAMES, FISH, AND CONSERVATION COMMISSIONERS; ACCCOMPANIED BY PAUL LENZINI, COUNSEL

Mr. GRANDY. John Grandy, National Parks and Conservation Association.

Mr. GARRETT. Tom Garrett. Friends of the Earth.

Mr. JAHN. Lawrence R. Jahn, vice president of the Wildlife Management Institute, located in Washington, D.C.

Mr. GOTTSCHALK. I am John Gottschalk, the international vice president of the International Association of Games, Fish, and Conservation Commissioners.

I have asked Mr. Paul Lenzini, our counsel, to accompany me to the witness table if that is satisfactory.

Senator STEVENS. That is perfectly satisfactory.

Do any of you have prepared statements?

Mr. GOTTSCHALK. Yes.

Mr. GRANDY. I think we all have them.

Mr. GARRETT. We all have prepared statements.

Senator STEVENS. This gets to the problem of having a panel.

Let me start, Mr. Garrett, if I may, with you, if that is agreeable with the other people. Since we are normally at the other ends of the pole on some of these questions, I think it is only fair to ask you to begin first.

You may handle your statement in any way you would like. If you would like to put it in the record and summarize it for us, that would be agreeable.

Mr. GARRETT. Senator Stevens, it is entirely up to you. Would you prefer that I briefly summarize my statement or simply respond to questions? I will do exactly as you prefer.

Senator STEVENS. We would like to have your statement for the record and then have you highlight it if you would. You have heard the problems that I have raised. I think it would be very helpful if you would comment on those, the suggestions and problems that I have suggested from this side.

Mr. GARRETT. Mr. Chairman, my statement is in the hands of the staff and will be available for the record.

Senator STEVENS. It will be printed in full in the record.

Mr. GARRETT. Thank you, sir.

The bills that have been introduced remedy the salient defects of the old Endangered Species Act of 1969 which did not work very well, in that they do contain the provision for protecting domestic endangered species and they eschew the egregious concept of "worldwide extinction," which crippled the 1969 act which made it practically unworkable.

I would like to note in addition to the administration bill, Senator Williams, of New Jersey, has introduced a bill, S. 1983, which seems to be superior in many respects. It takes the language of Mr. Dingell's bill of last year and his present committee bill, in having a separate section dealing with Federal-State relations, although I understand that Mr. Dingell's latest committee print has further improved the language in this section of the Williams bill.

Senator Williams' bill has one monumental improvement over any other bill. The definition of "take" in his bill has been widened to include degradation of habitat. An animal or plant which is killed as a result of habit destruction, in fact, in some respects is deader than if it is shot or chopped down, because there may be no further chance for its kind to ever return to that area.

I think section 4 of Senator Williams' bill includes some enlightened language. It includes a provision whereby if the status of the species is unknown, it is automatically listed. It seems to me that "unknown status" is *prima facie* evidence that the animal is rare.

We are pleased with the inclusion of plants in the protection in Senator Williams' bill and Congressman Dingell's bill. Aside from the intrinsic worth of the plants, survival of animal species is often contingent on their availability.

We particularly welcome the emphasis on land acquisition in these bills. It should be obvious to any of us that if we do not preserve the habitat of species, and the integrity of biotic communities, whether or not plants or animals are protected from deliberate molestation becomes, eventually, academic.

If the Congress is really serious in its determination to protect hard-pressed species, it must not only provide authority to purchase lands but must eventually provide ample appropriations.

The agencies involved in purchasing must also move promptly to insure the habitat, now, before vested commercial interests or competing State or Federal agencies stake their claim.

We are also delighted with the section in Mr. Williams' bill guaranteeing the States the privilege of enacting and enforcing stronger legislation, and with a section which places onerous recordkeeping burdens on importers.

We are equally delighted with the section permitting the funding of projects on behalf of endangered species abroad under the Agricultural Trade, Development, and Assistance Act.

While we find a great deal to praise in all of these bills, I think there are some common deficiencies:

One, a citizen's suit provision should be added. This would greatly stimulate proper enforcement, in my view, and strengthen the act.

While we are pleased with section 7(d), again, of Senator Williams' bill, permitting the listing of nonendangered species which are indistinguishable from endangered species, we wonder if section 4 provides enough protection to certain isolated population stocks of major species which may be gravely endangered, though the species itself is not in severe difficulty. That is the problem that has so rightly concerned you.

I do not know how to handle it, but it is obviously a very serious problem that must be dealt with and dealt with properly, and probably hasn't been yet in any bill.

Senator STEVENS. Let me interrupt.

The citizen's suit provision, isn't there adequate provision under the Environmental Protection Act already for citizen's suits? Wouldn't these be subject to an impact statement on the habitat destruction?

Mr. GARRETT. On habitat destruction, certainly. But under the traditional definition of take, as far as killing an animal goes, I do not think there is. I understand that Mr. Dingell's latest committee print may have that sort of provision. For better or worse, there is such a provision in the Mammal Act.

Senator STEVENS. What about the State having the right to challenge the action taken? I understand that you would like to have a citizen's suit to challenge the failure to act, am I correct?

Mr. GARRETT. Yes.

Senator STEVENS. What about giving the States authority to challenge the action itself?

Mr. GARRETT. What I was suggesting a citizen's suit provision, perhaps I should have said a provision similar to the one in the Marine Animals Act, providing the citizen may collect part of a fine if he is able to demonstrate that there has been a violation.

Initially, when I began to suggest this sort of thing, I had in mind the qui tam provision that is in the 1899 Refuge Act.

Senator STEVENS. A kind of informal section?

Mr. GARRETT. A qui tam provision. Perhaps citizen's suit is not quite the right language.

Senator STEVENS. Thank you.

Mr. GARRETT. Now, we are opposed in all of these acts to language which can be construed as allowing the automatic granting of a 1-year hardship permit as occurs under the 1969 act.

I would like to see language in section 8(b) of Senator Williams' act which makes the issuance of such a hardship permit contingent upon the findings of the public hearing, and which permits the Secretary discretion to set a phaseout quota only if it can be demonstrated that such quota will not have a deleterious effect on the species or stocks to be listed.

Senator STEVENS. That is not a bad suggestion. The only trouble is to get a hearing under the Administrative Procedure Act; it will take you a year to do it. If you have a hardship, it will take a year or more to comply with that procedure, as I understand it.

I think we tried to deal with that under the Marine Mammals Act with regard to giving the Secretary the right to have a hearing before such action took place.

Mr. GARRETT. Isn't there some way to obviate these problems, this constant delay and so on? Unfortunately, or fortunately, I am not a lawyer, and sometimes I am very naive about legal matters. I am constantly amazed at the delay involved in securing hearings, and otherwise navigating the legal administrative morass.

We oppose the granting and responsibility to continue for listing other than commercial fish to NOAA. The fact that NOAA has jurisdiction for most marine mammals under the Marine Mammal Protection Act, makes it all the more important that the listing of animals under this act might be in the hands of the Department of Interior.

Senator STEVENS. May I interrupt you again?

Mr. GARRETT. Yes, sir.

Senator STEVENS. Wouldn't that in fact be repealing the provisions of the Marine Mammals Act?

Mr. GARRETT. In my view, this provides a kind of fail safe mechanism, where if one agency fails to act in a critical case, and this could eventually happen, it could be corrected by proper administration in the other.

Senator STEVENS. Mr. Garrett, as long as your organization is in being, I do not think that is going to happen. Do you?

Mr. GARRETT. We will be in there kicking up a fuss.

Senator STEVENS. I am not worried about public notice of such things.

Again, it seems to me that this act is intended to do that; this act is intended to revoke the very tenuous and difficult compromise of the Marine Mammals Act that did preserve separate jurisdiction in the Department of the Interior and in NOAA. Do you agree with me?

You are asking us to make certain that it happens, aren't you?

Mr. GARRETT. I do not know what this act was initially designed to do. I did not write the act, although I have tried to get it amended in various ways, sometimes with very little success.

Section 6, appearing in S. 1983, was taken from the language of Congressman Dingell's bill last year dealing with the States. I consider it to be generally valuable, and I think the new committee print further improves the language, and I suppose it will be reported out in a few days. I think they intend to mark the bill up this week unless I am mistaken, and I hope to attend the Executive Committee session

I think that many of the problems that have been brought out here may be obviated by the language that Mr. Dingell will have in his new bill. I hope so. It is clear that the Federal Government cannot possibly administer the Endangered Species Act and cannot even begin to enforce it.

At the same time, I am a little concerned about the influence of some State game and fish bureaucracies, because they are commercially oriented bureaucracies that are primarily concerned with selling hunting licenses. In the past, they have not been at all concerned with what happened to endanger species.

They are especially loathe to relinquish habitat which is needed for endangered species, because they want to use it for their own management of target species.

Senator STEVENS. Thank you.

If you would permit me to interrupt you, I am afraid that buzz means me, but I would like to hear from Mr. Gottschalk.

Unless there is objection, all of your statements will be printed in the record.

You represent the International Association of Game, Fish, and Conservation Commissioners?

Mr. GOTTSCHALK. That is correct, Mr. Chairman. We are an organization that primarily is a representative of the State fish and game agencies, although we do have representation from Canada in our organization.

Very briefly, and we do have a prepared statement, I would like to emphasize that the States are concerned about endangered species. I will not bore the committee with it, but I have brought a full briefcase of publications which have been put out by some 35 States dealing

both with technical reports and also public information on the general subject as a physical demonstration that the States are involved in this program.

We do favor a strong Federal endangered species program that is really aimed at the essential problem of habitat destruction.

As this program goes forward, we want to see the American system of wildlife protection strengthened rather than eroded away. We think that the establishment of a State-Federal program that is truly cooperative, which takes the States into the operation as legitimate partners, would be a substantial step forward toward developing a sound cooperative approach.

We object to the idea of preemption which we think is implied in the bill that we are hearing today, as well as in several others, as both unnecessary and destructive of the system.

The preemption of the authority for the taking, we believe, is unnecessary because in recent times, taking, as it is currently understood, not as it is defined in Senator Williams' bill, is not a primary cause of endangerment.

The things that cause endangerment are deterioration of habitat and the impact of man's developmental activities generally.

Senator STEVENS. That is a call for me, and I do have a bill on the floor. I wonder, may I inquire from you gentlemen, would it be possible to continue this at 2 o'clock today?

Mr. GOTTSCHALK. It is fine as far as we are concerned.

Senator STEVENS. I must go, they have called me, and there is no one else who can continue this morning.

So, with your cooperation, I can do both. I would appreciate it very much if we can resume at 2 o'clock.

AFTERNOON SESSION

Senator STEVENS. Gentlemen, may we resume the discussion we had this morning.

Again, I appreciate your courtesy, Mr. Gottschalk, for summarizing your statement.

Mr. GOTTSCHALK. Yes, Mr. Chairman. I have five points that I feel are important. I have gone through the first two.

To make my summary comprehensive, I will very briefly go back to the beginning and say that the States do favor a very strong endangered species program and legislation that will accomplish this, focusing primarily on the real problem, which is the deterioration of habitat.

Secondly, we would like to see any bill that is enacted strengthen the American system of conservation through the establishment of a cooperative program between the States and the Federal Government.

In that connection, we take strong objection to the basic plan for Federal preemption, as we see it, in the legislation under consideration today, as being unnecessary and destructive of the basic system of conservation in the United States. We would like to make the point that under modern conditions, the taking of game, as it is customarily defined, is no longer a substantial cause of endangerment except for a very few species such as whales and some predatory mammals. Very few animals are suffering because of man's actual taking.

The third point that we would like to emphasize is that we feel that any Federal legislation should provide Federal incentives to the States to get on with the job of providing a strong endangered species program within the States.

As a matter of fact, many of the States are already involved in this program, but we recognize that to do the total job, more needs to be done. We feel that the incentives should go beyond additional financing, which we think would be important, to the point where when the question of the quality of the State's program is involved, then we might consider the Federal Government coming in and taking over if a State clearly failed to meet reasonable standards established by the Congress for the accomplishment of programs.

At this point, I would like to make a distinction, as we see it, between the question of the establishment of criteria for the status of endangerment of particular species on the one hand, and the adequacy of State programs on the other. Looking at it from either the administrative point of view or the scientific point of view, it seems to us it would be extremely difficult to legislate reasonable criteria that would cover the broad spectrum of animals that might become endangered.

We have had an idea that perhaps the way to approach this would be to authorize the establishment of a panel which would include scientifically knowledgeable people and also representatives of the State or States. Give this panel the responsibility to advise the Secretary on the question of what animals should be placed on the endangered species list.

With this having been accomplished, we think that we would have made a big step toward resolving what has become, in our opinion, a real problem; namely, that the utilization of subjective judgments has not always produced a list that we feel is a valid list in terms of actual conditions.

We find ourselves today with the peculiar situation of the American alligator, which was placed on the endangered species list, yet is so abundant in the State of Louisiana that the State declared an open season last fall and feels that the carefully managed commercial utilization of alligators is something in the best interest of the total conservation of the State of Louisiana. It will have side effects that relate to the preservation of marshlands generally, which are extremely important for a wide range of different kinds of wildlife.

Senator STEVENS. Let me interrupt you there, if I may.

Are you suggesting a commission like the Marine Mammals Commission or an advisory group?

Mr. GOTTSCHALK. A purely advisory group. We feel that the commission as set up in the Marine Mammal Act interposes an additional layer of authority and responsibility which is redundant. The authority should be concentrated in the Secretary, but it would be a way to moderate his authority by asking or requiring that the Secretary establish an advisory group. It would still be up to the Secretary to accept or not accept the advice of that group. We feel that the public participation, which we also strongly recommend, would be such that if the advisory group presented reasonable recommendations to the Secretary, he would be hard put to find a legitimate reason for denying the recommendations.

But nevertheless, if after review of all the circumstances, he came to the conclusion that the committee had not acted in the total best interest of the programs he was responsible for, he could still take action that might not be in conformity with the recommendations of that panel. That has covered my fourth point.

I would like to go back to No. 3, since I didn't talk about that particularly, and that is the question of whether or not States are carrying out programs or could carry out programs that would be acceptable and constructive and useful for the preservation of endangered species.

We feel if a State is doing this, then they should be encouraged to continue, and if a State is not, then we would find no objection in the State's responsibility being preempted. We object strongly to the idea of initial preemption and then retransfer of those preempted powers back to the States. But we believe if we turn it around, and there is much precedent for using this kind of a system, so that the States are first given an opportunity to perform and preempted only when they failed to perform, we would be developing a much sounder total position.

Senator STEVENS. What mechanism would you use for that finding that they are failing to perform?

Mr. GOTTSCHALK. We believe that the legislation that we are considering should set up some criteria that would relate to the total program that a State might be carrying out. This total program, or the criteria for this total program would involve, first, a clear finding by the Secretary—and we think he should have this authority to examine these programs and make these determinations—a clear finding that the State has statutory authority to develop a strong program for endangered species.

As a part of such a program, the State should be carrying out a program of research and survey to determine the status of endangered species within its borders and also what might be done to relieve the pressures on endangered species. It should have a broad management program dealing with regulations for the protection, not only taking, but habitat manipulation and so forth, to protect the animals.

It should have authority for land acquisition, so that it could acquire areas in which endangered species were clinging to existence in that particular State.

Lastly, we think that the program should have opportunities for public participation at the State level and also should provide for a public education program at the State level dealing with endangered species.

Those are basically five criteria that we feel would be adequate and should be built right into the total structure.

My last point has to do with more or less of a technicality. In the bills that have been considered, we speak of species or subspecies which may in the foreseeable future become endangered or threatened in all or significant part of its range. We feel this proviso is subject to two different interpretations.

The way we see it, it would have the effect of providing protection for an endangered stock in limited areas, while allowing utilization of that species or subspecies in those portions of its total range in which it is not endangered.

In other words, the protection would be afforded to that particular place where it is endangered. The fact that it is endangered there, would not be used as justification to place a blanket of total protection on that animal wherever it occurred throughout the rest of the total range where it might be in abundance. We would just like to make it clear as we understand it, and we certainly favor the concept, that this protection and the application of the law would apply only to that particular area or stock or subspecies that might be endangered.

Those are the five principal points that we address ourselves to in our testimony. We would be very happy, Mr. Lenzini and myself, to answer any questions that you might have, Mr. Chairman.

Senator STEVENS. Thank you.

I do have some questions. I think we ought to call Mr. Grandy first and then Mr. Jahn.

Mr. GRANDY. Thank you. You have my statement in its entirety for the record. I will just briefly summarize the points that I make in it, and then answer any questions you may have.

First of all, we believe the most important thing to put into a new law is an expansion of the definition of "take" to include curtailment and modification and destruction of habitat. This is the point that is raised in Senator Williams' bill. Dr. Gottschalk has alluded to it numerous times. I think habitat preservation is the most important thing that we can do to preserve, over the long haul, endangered species.

I think the purposes of the act and the corresponding regulations regarding when an endangered species may be taken, should reflect the basic purpose that this act is designed to restore endangered species to a point where they are no longer covered by the act. We should be trying to get them from list 1, if that is what we want to call it, to list 2, and from there out of it entirely.

Along with that, I was pleased this morning to hear that the Bureau and the Department of the Interior is looking on species as being a population stock, species or subspecies.

This will, in our opinion, allow managers to be dealing with manageable units just on the basis as Dr. Gottschalk just mentioned, of the status of a population within a particular area. You can manage in a way that is best for that unit without having to look at the status of the species.

In that regard, I think that system should be fluid in that our regulations should be responsive to changes in the status of a population segment. We should attempt as best we can, to modify or to speed up any procedures that are in the act, such as use of the Administrative Procedure Act, and petitions that may be filed in that regard, to allow managers to quickly move an animal from one list to the next or off, if that is the case.

We believe that the public interest would be best served by having the Federal Government have regulatory authority over taking endangered species, species as defined previously.

In this regard, we don't suggest that the Federal Government have authority over managing, and we believe that strong incentives, as Dr. Gottschalk mentioned, should be provided the States to carry out management programs that will be effective.

As you pointed out this morning, I believe, Senator, we have the case where the State government has the bulk of the enforcement

personnel and the bulk of the management personnel, and we believe that maximum use should be made of these people.

Lastly, this is sort of a minor point and it relates specifically to various sections of all the bills, to the maximum extent possible, the Secretary should be required to publish any reasons he has for discretionary actions that he may take within this legislation. This would include compromising a civil penalty or listing a species. This should be done in light of full public knowledge and public disclosure.

I will be happy to answer any questions you may have.

Senator STEVENS. We will have some questions later.

Dr. Jahn, do you have a statement, sir?

Dr. JAHN. Yes; I have submitted the statement for the record. With your permission, I will just proceed to highlight some of the material in the total statement.

We endorse the basic objectives of S. 1592, but we believe the bill is inadequate as it is presently offered. I would like to proceed to identify some of these areas that we feel are a bit weak or confusing, with the idea of strengthening them.

The two main weaknesses in the bill, as we see it, are, first, it is not predicated upon the proven principles of scientific wildlife management.

In this era, when there is great demand being put upon the habitat base, as well as the populations that occupy the habitats, we feel it is absolutely essential that sound principles of wildlife management prevail.

Second, the thrust of the bill tends to disjoin rather than bring together Federal and State agencies having responsibilities for the perpetuation and enhancement of wildlife. We don't think that the thrust of the legislation should be limited merely to the protection of endangered species, focusing, you might say, on the animals themselves.

We believe the bill should make direct reference to restoring species and focus on the necessity of maintaining habitat for those animals and of restoring those populations of individual species that are small in number. We do not feel that the language of the bill captures and takes advantage of the best available expertise in managing endangered species.

It tends to ignore the great body of State expertise and imposes a unilateral extension of Federal authority into an area of historic State responsibility.

I emphasize this because we have had experience over a long period of time to indicate that wildlife restoration can be highly successful when we have a Federal-State team. In the past, this has been on a voluntary basis. I have personally been involved with the restoration of a subspecies on which hunting seasons were closed in 1946, namely, the Mississippi population of Canada geese. This is a subspecies—a unique population—that had declined to a point where no hunting was permitted. It has been restored to a population better by tenfold than in 1946. In the best estimates of technical people working on the population, there are more of these birds alive today than ever in the history of that particular flock.

This is a clear example of what effective teamwork can do to upgrade a wild population through scientific principles of wildlife management. We question whether an all-Federal program of the

magnitude required to assist endangered wildlife at home and around the world, can be assured of budgetary and appropriations support, even if the other practical problems which are posed by the bill can be resolved.

The bill as we understand it, authorizes no specific appropriations, and this is a matter of concern, especially when 26 units of the National Wildlife Refuge System in 15 States face major reductions in staffing and maintenance through the lack of funding.

Several of those refuges provide habitat for endangered wildlife, which, of course, is the subject of a pending proposal.

We don't say this in criticism of the actions being taken, but we are vitally concerned about them.

Senator STEVENS. I am concerned about them, too, because what that means is they will withdraw 1 million acres of my State for every one of those that is closed in the South 48. We seem to be substituting millions of acres in Alaska for hundreds of acres in the South 48. And I don't think it is effective management at all.

Dr. JAHN. We appreciate your concern, Senator. As I say, we bring this point to your attention because we are deeply concerned about it.

At present, I think you indicated, the Bureau of Sport Fisheries and Wildlife has funding this fiscal year for 158 law enforcement agents.

Senator STEVENS. 158?

Dr. JAHN. 158. That is the best figure we have been able to come up with at the time we appear here. These men operate throughout the United States including Hawaii and Alaska.

To put this small number of Federal wildlife enforcement officers into national perspective, I refer to an authoritative study done by our own institute to determine the number of conservation law enforcement officers who were in State employment. According to the data that we have assembled any 1 of the 10 States has more wildlife law enforcement officers than has the Federal Government for the whole country.

In the 50 State wildlife agencies, there are more than 5,800 full-time law enforcement officers. They comprise 32.3 percent of all employees in State fish and wildlife agencies. An average of slightly more than 27 percent of the State agencies' overall budget is devoted to wildlife law enforcement and more than \$72 million was spent on this work by the States during the most recent year of record.

I emphasize \$72 million. In contrast, the Federal Government, through the Bureau of Sport Fisheries and Wildlife, invested only \$6.7 million in enforcement in fiscal year 1973. This explains our concern about not tying the States directly into a full teamwork program.

We are particularly concerned about section 4(a) of S. 1592, which clearly provides for the extension of Federal management authority into resident endangered species. You can appreciate, as I stated previously, this is an area that has historically been handled by the States. In section 9(a), the Secretary also would be given authority to manage resident fish and wildlife classified as endangered or likely to be endangered everywhere in a state, regardless of land ownership.

Those who favor S. 1592 as written may argue that the bill will give the States an opportunity to cooperate. But as John Gottschalk has pointed out, it is a question of how this is accomplished.

The present proposal, in essence, says that the historical rights of the States will be removed and then restored if the States meet certain criteria. We believe a different approach, as outlined by Dr. Gottschalk, would be more appropriate; namely, that the States continue their programs, enhance them where necessary, and be permitted to carry them out. Only if they do not carry out an effective program would the Federal Government intercede and supersede the States.

Senator STEVENS. I am inclined to agree with you. We face the same problem in the bills before this committee concerning no-fault insurance. There was a group that wanted to have a Federal no-fault plan. When we really looked at it, we backed up and we established minimum Federal standards, that if a State had such a law, the Federal law would not become effective. Suddenly it, I think, has overwhelming support throughout the States and practically the whole country with the exception of some of the trial lawyers. That is what I am looking for in terms of criteria here. I would like to see us be able to spell out in the bill what does the State have to have in terms of a management organization, scientific organization, enforcement organization to be considered at least as far as general management is concerned qualified to handle a management program with the State, and then set up a procedure whereby if there is a species or sub-species or stock that is likely to become endangered, that the Federal agency would give the State notice that this was not being in the opinion of the Federal Government properly managed, and unless something was done within "X" days to change this program, there would be a Federal preemption.

It seems to me that that is the way that we are going to get more State funds dedicated to the goal that we all support, and that is protection of these species.

Let me go back here, however, to Mr. Garrett and Dr. Grandy. Are you a doctor, too, Mr. Garrett?

Mr. GARRETT. No.

Senator STEVENS. People who have Ph. D.'s are entitled to be addressed properly, as far as I am concerned, Dr. Grandy.

You both mention the flora aspects of the bill, and we had that subject before us last year, too. Isn't this getting us into the position where this bill will go to the agricultural agencies and will go to the agricultural committees?

My memory is last year we had substantial question raised as to what effect this would have on the activities of the Department of Agriculture and the jurisdiction of the Agricultural Committees of both Houses. Is this endangered flora within the Federal jurisdiction or on private property as well?

Mr. GRANDY. Senator, it is in both places, to my knowledge. I am concerned with it in particular in regard to this legislation because the treaty on which hearings are to be held next week or the week after addresses itself to endangered flora.

Senator STEVENS. I understand that, but my problem is I just wonder if we are again getting ourselves into some situation with regard to extension of Federal jurisdiction to flora in private hands. Take the Florida mangrove area, for instance. I understand there has been a substantial problem down there, and they have established a State regulatory commission to determine who can dredge and what not through some of those areas now. You are suggesting really that the Federal agencies would have the right to preempt those laws, too, isn't that right? Isn't that what the Williams' bill suggests?

Mr. GRANDY. At this point, I suppose it does, Senator. I haven't gone deeply into the flora aspects. It has been suggested to me and to others that at this point what the Federal Government has to do is gear up to endangered flora.

Senator STEVENS. I think that is right, but I wonder if this is the bill.

Mr. Garrett, you suggested putting the two together, your organization does, isn't that correct?

Mr. GARRETT. We supported the bill that Senator Spong introduced last year that had flora in it and which in effect was the bill that Mr. Dingell had threshed out in his committee. We have always had some reservations about bringing the Agriculture Department into it. But it seems to me that the survival of some flora is so integral with the survival of fauna that you cannot differentiate between the two.

Senator STEVENS. My understanding of this bill, Senator Williams' bill and Senator Spong's bill from last year, there was no necessary connection. There wasn't just flora where there were in fact endangered fauna or fauna likely to become endangered, where we were going to control the flora. You didn't so limit it.

Mr. GARRETT. I agree. Last year the witnesses for the Agriculture Department were very concerned about retaining a genetic pool of original strains of wheat and corn and so on. I think that is commendable, but it was a bit in left field as far as the focus of the bill is concerned, which should be to define, as I see it, areas where particular species are endangered. An example is the Saguaro cactus in the Southwest. The Saguaro is endangered throughout its range.

Senator STEVENS. My real question is isn't this something that ought to be considered in connection with the land-use planning concept that Senator Jackson has, an overall management program by the States of managing flora without regard to the fauna?

It is my understanding that Interior has been asked for a study of the issue, and it is also going to come up with regard to the treaty implementation to this committee. I wonder whether we should make this both a bill that deals with endangered fauna species and a bill to cover endangered flora species or whether we are not legitimately concerned enough with the latter to make this just an endangered species in the wildlife sense.

Mr. GARRETT. You may well be right. And I have no particular preference as long as the flora and the habitat and so on are preserved. But there are some plants which are not economically significant, and are not significant as far as any ecological community is concerned.

Senator STEVENS. I understand that. I understand the comment about habitat. You have all commented on that with regard to wildlife. I really question it, and I questioned this last year with Senator Spong.

Let me go back to you, Dr. Gottschalk. Are you prepared to offer suggestions for specific amendments which would achieve the objectives that you have outlined?

Mr. GOTTSCHALK. Yes, sir.

Senator STEVENS. Are they contained in your full statement?

Mr. GOTTSCHALK. No, We have only touched on these things in general, but I think Mr. Lenzini would be prepared, and I would, too, of course, to work with the staff in developing some specific language. In fact, we have some specific suggestions.

Senator STEVENS. That depends which vehicle we use, whether it is Senator Williams' bill, the administration's bill, or the bill that comes over from the House. They are all different, as I understand it.

I would welcome your submission of suggested amendments along that line.

Mr. GOTTSCHALK. We would be glad to supply those.

[The following information was subsequently received for the record:]

PROPOSED AMENDMENTS TO H.R. 37, S. 1983, ENDANGERED SPECIES LEGISLATION

Except where otherwise noted, the following proposed amendments have been concurred in by USDI, NOAA, IAGFCC, WMI, NWF and NRA. Bracketed matter is deleted; underscored matter is added.

I. Definitions

A. Adopt Section 3(1) of S. 1983, amended as follows: § 3(1) "Conservation" [and "management"] means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the [optimum] carrying capacity of their habitat. [Such] The term[s] includes the entire scope of activities that constitute a [modern] scientific resources management program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within [these] *this* term[s], when and where appropriate, is the protection, propagation, [conservation,] and restoration of such species, including [regulation and] *regulating* taking necessary to these ends.

(2) Utilize Section 3(7) of S. 1983, amended as follows: § 3(7) "[Optimum] Carrying capacity" means the ability of a given habitat to support [the optimum sustainable population of] an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function.

(3) Delete the definition of "Optimum sustainable population" in section 3(8) of S. 1983.

Senator STEVENS. Have you got any statistics as to the actions that the States have taken with regard to the Marine Mammal Act and the policy that was expressed in that Act of preemption, any specifics on that?

Mr. GOTTSCHALK. I do not have any specific statistics. This would relate, I presume, to the extent to which they have or have not carried out programs that they had previously been carrying out. I do not have any specific information on that score.

Senator STEVENS. Mr. Gottschalk, do you have any estimates of the cost to the individual States, that would result from the passage of either of these bills we have before us today?

Mr. GOTTSCHALK. You are asking for a figure on the total cost that the States might be put to in order to carry out such a program?

Senator STEVENS. Yes.

Mr. GOTTSCHALK. The cost of present State programs runs from practically nothing to as much as \$100,000 per year per State. It is our view that the amount that the State is currently spending would

be a poor measure of what they should be spending and would be spending under this authority if it were to come to pass. We have not asked the States up to the present time to give us a reading on the extent of enlargement of program, because the overall definition of what kind of responsibilities they would undertake and the general dimensions of the program are so vague that we didn't really have anything to suggest they plan their program on.

If I may be allowed to speculate, it would seem to me that we would have to figure on a minimum of \$50,000 per State average. This, in my view, would not be an amount that would go to each State necessarily, but in the first year I would think that about \$2½ million would be required to get the program off the ground. This would add significantly to the States where there are significant endangered species problems. We have States like California where we have a multiplicity of the problems. In other States, not to be particular, the State of Indiana which I know a little bit about, they have very few endangered species problems so, we would find quite a range. If you would accept a kind of guesstimate, I would think initially of some amount of about that size would get the program started. I would expect that it would increase substantially in later years, however.

Mr. LENZINI. Mr. Chairman, we are submitting to the staff tomorrow a compilation of what each of the 50 States is doing already in the area of endangered species programs. Our compilation indicates that approximately 35 States already have formal endangered species programs at this present time, and in the compilation we are to submit to the staff, we are setting forth the amount of money which was devoted to endangered species activities in the last fiscal year. Sometimes these are difficult to come up with because of the fact that you have enforcement activities for game species and you may also have enforcement personnel attached to endangered wildlife.

In any event, there will be some statements as to the amount of moneys that we think is being spent.

Senator STEVENS. I appreciate that. If it is not too long, I would hope that we would print it in the record, and we will try to do so, because I think there would be a substantial amount of information to go along with this hearing.

Mr. Garrett, as I understand the position of the Friends of the Earth, you are saying you would like to have this bill consolidate in the Interior Department the endangered species and those likely to be endangered notwithstanding the present division of authority between Commerce and Interior, is that correct?

Mr. GARRETT. Excepting for commercial fish species, that is correct, yes, sir.

Senator STEVENS. In effect, you really want us to overrule the ocean mammals bill in that regard?

Mr. GARRETT. At least we want to have something behind it in case the administration of that act eventually falters. At the present time, I have complete confidence in Dr. White, who is a highly efficient and conservation oriented administrator. But I do think that the Commerce Department is inherently more vulnerable to commercial pressure. In the ensuing years, the administration might not be so good. It would make me feel much more comfortable to have a second lock on the door.

Senator STEVENS. What species are you talking about that face commercial pressures? We faced the ocean mammals situation last year. What are the others?

Mr. GARRETT. You mean where the division of authority would exist? For example, the pressure to begin reharvesting the gray whale. Dr. Rice, who worked for the Commerce Department for a while and who dissected whales that were brought into the Richmond, Calif., plant, drew up a paper on criteria which would permit the beginning of whaling again off the California coast. That sort of thing.

Senator STEVENS. Let's be more specific, Mr. Garrett. What about Pribilof Island seal, which is under the treaty which I know your people don't like? It is subject to a considerable amount of regulation as a result of it. If we were to follow your suggestion, I would suggest that fox fur would just move to Canada and then under the treaty the taking would still continue, but the processing would be out of this country.

Mr. GARRETT. To begin with, we haven't objected to the management of the Pribilof seals. I think you are confusing us with some of the humane groups.

Senator STEVENS. I apologize if that is the case. I know we had a substantial amount of testimony urging the cessation of any harvesting.

Mr. GARRETT. We objected to that viewpoint, and have pointed out that management has been reasonably successful in the Pribilofs. Unless the management is disastrous, or some other contingency occurs; something like pollutant concentrations reaching undreamed of severity, I don't think there is any chance of the Pribilof seals becoming endangered.

Senator STEVENS. They are going to be more endangered because of the foreign fishing fleets on our food stocks.

Mr. GARRETT. I agree with that. Surely if things get so bad that the Pribilof seals are endangered, well, there isn't anything to do but stop killing them and try to save the remnants some way. But that is a contingency, as pessimistic as I am, that I can't foresee.

Senator STEVENS. Why would you want to take the expertise into Interior over those animals that are within the competence of Commerce today? It is the fear of commercial pressure?

Mr. GARRETT. In part. Of course, Interior already is administering the Endangered Species Act, the 1969 act, and they have done so reasonably well. At least they have done well insofar as marine mammals are concerned.

Senator STEVENS. But that was a very limited act.

Mr. GARRETT. I agree with that.

Senator STEVENS. We are now dealing with wildlife of all types that have been under the States in the past. I just wonder where the commercial pressure is in terms of the jurisdiction Commerce already has.

Mr. GARRETT. It seems to me the function of NOAA should be to manage commercial species. Of course, it has jurisdiction under the Marine Mammals Act for mammals, and will presumably act to keep those species from ever having to be placed under this endangered species act. But I believe those which are there should be left where they are, because I think the Interior Department should still

have the key to shutdown killing, just in case everything else falls down. That is what I am saying.

Senator STEVENS. It has that key on those species which are actually endangered. We are getting into two new subcategories, those likely to become endangered and the stocks that are likely to become endangered. It would seem to me we are going to have to build up another staff in Interior to complement a staff that is already in Commerce to deal with those specific species that Commerce has competence on now.

Mr. GARRETT. Of course, it won't hurt the Interior Department to listen to Commerce and to examine their data. I am sure that any scientist who has developed data is glad to turn it over to any other scientist.

Senator STEVENS. My prejudice normally would be with Interior because I have spent so much time there. When we are having so much trouble getting money, the cost of building up another staff in Interior when Commerce has the competence, it is something we should consider.

Mr. GARRETT. Do you have to build up the duplicating staff? The Office of Endangered Species has a very limited number of employees. They may need more. But they have people who sit at a desk and gather data compiled elsewhere. And, of course, they have NOAA's data available to draw upon.

If I had my druthers, I would like to see the program, as far as the research part of it is concerned, in the Smithsonian, or at least the compilation of data there rather than in the Interior Department. But I realize that is not feasible. I think we are better off to leave it where it is. They are doing reasonably well there. They have channels of communication to bring the information in. They compile the data, sit at their desks, and eventually they come up with, generally, reasonable determinations.

Senator STEVENS. I couldn't agree with you more, but on the other hand, Commerce has the same kind of competence today with regard to those who are likely to become endangered.

Mr. GARRETT. But they are already managing these animals. And if they manage them successfully, they won't have to worry about the Interior Department standing back there shutting off taking.

Senator STEVENS. Let me ask the panel: Do any of you know any of the wildlife subject to Commerce jurisdiction today that are subject to commercial exploitation outside of the ocean mammal? I don't know of any.

Mr. GARRETT. If you consider the anadromous and pelagic fish wildlife, sure.

Senator STEVENS. But you by definition said you would leave that there.

Mr. GARRETT. Yes, I am perfectly willing to leave it there.

Senator STEVENS. So we are only talking about mammals, and we aren't talking about the relationship of the ocean mammals bill on this bill; would you agree with that conclusion?

Mr. GOTTSCHALK. Mr. Chairman, the only thing that I can possibly think of that might fall into this category, for example, would be in the area of marine reptiles. The act speaks to several different classes,

and you almost have to strain yourself, however, to think of anything that would fall into that category, because even marine reptiles, such as the turtles, some of them are endangered and some of them are not, and they are subject to some degree of exploitation.

But to answer your question, there probably are other examples in the classes of Mollusca and Crustacea as well as the reptiles that would fall into this category.

Senator STEVENS. Would I assume that you gentlemen who do believe we should have flora protection in this bill want the protection agency to be the Department of the Interior, enlisting the agency to list the endangered species of flora? Would that be Interior, as far as you are concerned?

Mr. GARRETT. I admit that is a very, very difficult question. I think the Interior Department is now beginning to gather up a little data, but obviously they have none in existence, and the Agriculture Department takes very little interest in flora other than that which is significant for agriculture. I have an idea that the repository of knowledge at the moment would probably be the Smithsonian.

Senator STEVENS. I was wondering why we shouldn't have the Smithsonian handle endangered species, period.

Mr. GARRETT. Frankly, I think that is an awfully good idea. It is not a bad idea at all.

Senator STEVENS. They are doing a great deal of work already.

Mr. Gottschalk, would you provide the States with authority to block a proposed listing by whoever has the authority?

Mr. GOTTSCHALK. No. It seems to me that ultimately this responsibility has to come to one particular responsibility or seat of authority in the Federal Government, and I think if the States were to be given a veto power, it would create a tremendous amount of confusion and make the system unworkable. I think finally we would have to give the authority to the Secretary and his authority would be final.

Senator STEVENS. Would you provide in the basic legislation before us the mandatory requirement on the listing authority to give notice to follow specific procedures before providing a particular law with regard to any species?

Mr. GOTTSCHALK. Yes, and in addition, we would insist to the maximum extent of our capability that there be prior consultation. This should not be merely window dressing but an actual consultation carried out in earnest. I made the suggestion earlier that there be some kind of an advisory panel constituted in the act which the Secretary could refer to for advice as to what animals should be placed on either the threatened or the endangered list.

Senator STEVENS. There is consultation and there is consultation. I am more and more impressed all the time by the fact that I have a prerogative of being consulted about certain things downtown, and I find they call me and tell me an hour before they do it.

I just wondered if we should not build into this law a specific period of notice unless someone, Dr. Grandy, proclaimed an emergency. We have emergency procedures for publishing regulations in the Federal Register. You can state there is an emergency and that it is to become effective immediately, but normally you have to give people notice and publish the proposed regulations in the Federal Register. That is what I have in mind concerning this.

Would any of you have any objections to a procedure that spelled out a specific time limit if there was also a procedure for handling emergency listings?

Mr. GOTTSCHALK. No problem.

Dr. GRANDY. I think that would be great.

Mr. Garrett. No problems, Senator.

Dr. GRANDY. I think the time limit could work to our benefit, too.

Senator STEVENS. I think that is true. I think having served in the State legislature before I got back here, if someone had served notice, and it would be a public notice, that there was a deficiency in the State fish and game management program that we would have been all over them like a dirty shirt on Saturday night. I think you have got better built-in protection than you realize with the publicity of a notice of a deficiency in a State management program. If they do not correct it, then you cancel their authority.

In my experience, they would be very quick to correct it, or else defend the management program, one or the other.

Mr. LENZINI. With respect to whether a State program is an adequate State program, we would very definitely think that a notice provision should be in the bill; namely, that the State would have to be given a chance to correct the deficiency.

But with respect to the listing of the species as endangered or not endangered, I am really not so sure about the value of the notice provision. We would rather see the legislation indicate that while the States do not have a veto over whether or not a species is listed, that there be provision in the bill for mandatory consultation, and that the Secretary give consideration to—give full consideration to the views of the affected States.

As the bill is presently written, it is consultation as appropriate, and it seems like business as usual.

Senator STEVENS. As a prior district attorney, I have real trouble with the problem of the Utah law concerning swans and other laws. I am surprised at some of the things I have learned in some of these hearings about some of the wildlife that we do not consider to be game that is considered to be game in other areas.

It would seem to me that if there is a tradition in some area where there is hunting—I understand they hunt doves in some parts of the country, for instance—if we are to list doves as being a species that is liable to become extinct, that would render all those who were in the habit of hunting doves subject to criminal penalties if they continued.

I think that is where we really have the stretching of the constitutional authority as to Federal supremacy, and I do not think you can do it legitimately without some notice. Just merely citing it, say, for an area, if you had the pressure come from Arkansas on a particular species, and this is the same species in Pennsylvania, and there is a total Federal preemption, I think unless there is adequate notice, the people in Pennsylvania are going to be in trouble. I think the protection there is for publication, and the staff suggests publication of reasons for the action to be taken with a mandatory period for submission of views to the affected States.

I think then you would have the procedure requirements that would be sufficient.

Do you have any problem with that, Mr. Garrett?

Mr. GARRETT. No.

Senator STEVENS. Dr. Grandy?

Dr. GRANDY. No, sir.

Senator STEVENS. It has been suggested to the committee that there should be exceptions made to this endangered species proposal.

Let me tell you some of the categories that have been suggested and ask any of you to comment on the need for any exceptions, and particularly the need for these exceptions.

It has been suggested that the taking of animals for scientific purposes, for breeding purposes, for educational purposes, or for display purposes might be exceptions within the concept of the category of those animals likely to become endangered species, not the endangered species themselves.

Do any of you have any views on that?

Dr. GRANDY. I would favor those exceptions to the extent that they aid in restoration of the species and add in one additional one, which would be for critically needed, crucially needed human health research. Again, just to reemphasize, I think the purpose of the bill ought to be, get these animals restored and out from under this legislation.

Senator STEVENS. If they were out from under this legislation, the jurisdiction of the States would be restored?

Dr. GRANDY. Certainly.

Senator STEVENS. What do you think about that, Mr. Garrett, the need for exception?

Mr. GARRETT. I concur with what Dr. Grandy said, although I am a bit chary of medical research unless it is rather carefully demonstrated that it is absolutely necessary.

We have altogether too much destructive research for Ph.D. programs and that sort of thing, repetitious research that is not required. It would be an awful shame to use an animal that was getting scarce for that sort of thing.

Senator STEVENS. Dr. Jahn?

Dr. JAHN. Yes; I agree with Dr. Grandy. We have examples. For example, in Florida, a famous orchid which people propagated, so to speak, in their back yards. Actually, they have restored these to a semicolonial condition and reestablished them in natural areas in some of the States. This again is through State efforts.

Similarly, in breeding programs for waterfowl held under semi-captive conditions, there have been some subspecies that have been propagated over a period of time. We can take the bison, for example; historically, some ranchers held small remnants of the bison. It is from those small nuclei that they were reestablished.

For restoration purposes and scientific purposes, as you indicated, my answer is yes. We can have a net gain here.

Mr. GOTTSCHALK. I feel the same way, Senator. There is a certain amount of distinction, it seems to me, between the two categories, and it would be helpful if the exceptions were restricted in the case of endangered species to the Secretary himself.

In other words, there should be an authority for the Secretary to take endangered species when required for scientific purposes aimed at the rebuilding of the wild population.

I would have some reservations about issuing any kind of permits for exceptions to anyone else for the species in the endangered species list. However, I think a more relaxed stand can be taken on the question of the animals in the threatened species list, and there with the supervision of the Secretary permits might be issued for exceptions for scientific research, education, breeding purposes aimed at restoring the population, and carefully regulated public exhibits that would in the long run have the effect of bringing to the attention of the public the plight of some of these threatened species.

Senator STEVENS. Very good.

Dr. Grandy, do you have any specific suggestions for refining the definition of species or the criteria for the designation of the species?

Dr. GRANDY. First of all, the definition of species, as I indicated before, I think, should include population segments, population stocks as we have talked about here.

Senator STEVENS. Let me ask you about that. Do you view that as being a temporary thing with regard to the stocks as opposed to the designation of endangered species which I take it is a permanent designation subject to revocation if they are restored?

Dr. GRANDY. I would hope that it would all be temporary and they would all be restored. I would like to view them all in the same way, that you could have an endangered stock—I cannot think of a good example right off, but some of the species that you are familiar with in Alaska certainly may fall into this category in the lower 48—that we would have an endangered stock of grizzly bears, for example. We could list that stock in the areas in which it occurred in the lower 48 States. The stock in Alaska would be unaffected by that listing. The Federal Government would, I guess, in the proposals then take control of it, and when it was rebuilt and restored, it would be de-listed.

Senator STEVENS. That is an interesting comment, because I am reminded again of our polar bear stocks. I think we have the only ones in this country. We have the only management program, and it was preempted without any finding of adequacy or inadequacy to the detriment of the polar bear, because our State no longer now is providing the management program and Federal agencies have not increased theirs.

I agree with your conclusion, but I am not necessarily convinced that designation by a biologist or whoever is in charge of the listing of these species is going to result in a competent assumption of responsibility by the Federal Government. I think this is what bothers us more than anything else, is the preemption of the State authority and with it goes the abandonment of State responsibility for appropriation, for management, and I do not see that it is being substituted by adequate staff on the federal level.

Dr. GRANDY. I would go back to my original statement, that I only envision preemption of regulatory authority as opposed to management, meaning in this case that I wouldn't think that taking, shooting, let's say, in that form of regulation would be part of the management program for endangered species under normal circumstances.

I would certainly hope that we would find better ways, more adequate ways, to get more substantial funding than we have so far managed to get through the Marine Mammal Act.

I am not particularly familiar with that act, but my understanding has been that funding, adequate funding, in particular, has not been forthcoming. I certainly hope we can get that adequate funding, Federal incentive, what-have-you, for adequate programs in the States.

Senator STEVENS. I would ask you to consider the impact on the State legislature that has just as many measures on it for funds available as any State legislatures as we have, and if there is no authority for management to acquire the authority to carry out enforcement of Federal laws, it is extremely difficult to acquire the funding to carry out the Federal program by the States. If we contemplate listing a species, the polar bear is a good example; there was adequate funding, I thought, in the polar bear management program, but they are no longer managing the polar bear.

Now, it is a secondary aspect to wildlife management in the area. It is not a primary aspect. I would hope that we would find a way around that.

I still think that the way around it is to have some minimum Federal standards for management programs, and if there is a listing of endangered species, to prohibit the States from having any law which is contrary to that. That would still leave with the States the total management of the animal without access to taking as a management tool. That is what I am saying.

But you would still have the responsibility in the State and you would still have the funding in the State.

Maybe I am going to have to refine that a little bit. Before we offer it, I will suggest it to you gentlemen and see what you think about it.

I understand that some of you have taken interest in this international convention that was signed this spring. Do you see any difficulty with this legislation in light of that convention?

Mr. GOTTSCHALK. I see none personally. In fact, it seems to me that the legislation under consideration is complementary, remembering that the convention was designed to establish controls over the trade of endangered or threatened wildlife. This is distinct from wildlife that might be endangered because of the principal cause of endangerment in the United States, which is the destruction of habitat, reinforcing the idea that has been brought out here several times today.

So, it seems to me that the convention and this act and the other actions that have been taken with respect to domestic endangered wildlife, are complementary and mutually supportive.

Senator STEVENS. Do any of the others have comments about it?

Dr. JAHN. I agree completely with that view. The convention is really working on a worldwide basis at one level, and this legislation is moving down now really to focus more clearly and distinctly at the national and State level combination. I agree that it is complementary and supplementary.

Dr. GRANDY. I would also agree with that, and would point out one other additional thing, that within the convention species was defined as a species, subspecies or population segment, and that was used adequately in the way I describe in getting together the list of animals that now appear on the appendices.

Senator STEVENS. I want to address myself now to criminal provisions of those bills.

There is a civil penalty, which I don't think raises a constitutional question. But the criminal provisions of the bills that are before us provide for not only a fine and imprisonment, but for revocation of any Federal hunting or fishing licenses, permits or stamps.

I again would like to ask, and I think this comes, Mr. Gottschalk, within your purview, more than anything else, can you tell us what species we are talking about in regard to those which are likely to become endangered that are today subject to regulation by the States where there is a likelihood of having the State laws preempted?

I think people on the floor will say, "What are you talking about? Are you talking about deer? Are you talking about rabbits? Are you talking about ducks? Are you talking about geese? What are you talking about?"

Mr. GOTTSCHALK. As a matter of fact, the number of animals which are on the current list of endangered wildlife that are currently subject to any kind of exploitation, commercial or recreational, if I may use that term, is very limited. Out of the 101 species that are on the current endangered species list published by the Department of the Interior, there are only 8 species which have customarily been taken—again using the traditional definition of the term. These are the Lake Erie blue pike, the American alligator, the Eskimo curlew, the eastern timber wolf, the red wolf, the Joaquin kit fox, the Florida panther, and the Key deer.

So there are relatively few.

Senator STEVENS. In the balance of that list, those ones are on the endangered species now?

Mr. GOTTSCHALK. Right

Senator STEVENS. Do we have enough information to indicate those that are potential listees of the new category of those who are likely to become endangered?

Mr. GOTTSCHALK. Frankly, I haven't had an opportunity to analyze the list which is contained in the Department of Interior's list of threatened species in detail so I could give you the same compilations for all those. It could be done, and it may be that Interior has already done this. I don't know.

But I can say that by far the largest number, of course, are animals which are not taken customarily.

Senator STEVENS. I understand that. We are expanding that definition of "taking," too.

Do you have that, Dr. Grandy? Do you have such a list?

Dr. GRANDY. I have the Department of the Interior's new book.

One thing I wanted to indicate was to the extent the list and the treaty are meaningful, the polar bear is one appendix 2, which I understand would perhaps correspond to the polar bear—that appendix 2 might correspond to our own list.

Senator STEVENS. It is already in effect. There is a moratorium in effect on it.

Dr. GRANDY. Again bringing up the question of which act would apply.

Senator STEVENS. It has not been listed as an endangered species yet, has it?

Dr. GRANDY. No, sir.

Senator STEVENS. But you think it is one of the species that could be listed as a species that is likely to become endangered?

Dr. GRANDY. To the extent that appendix 2 on the treaty gives us some indication of that, and I suspect it does, then, yes, sir.

Senator STEVENS. You are right. That brings out a substantial conflict between the two acts, if that is the case.

Is there a list in that new document that you have? I am sorry to tell you, I have not been favored with a copy of the document that you have there. Is there a list there of the threatened species as prepared by the Interior Department?

If not, I will ask the staff if we can get one. I think that is a nice question that people are going to ask. I think when you go to the floor, if you are talking about preempting State law, it is necessary to know what species you are talking about.

Dr. GRANDY. Everything in this document is classified as "threatened." Some appear on the endangered species list; some do not.

Senator STEVENS. If we work out a provision which will in fact protect the existing jurisdiction of NOAA with regard to those species that are threatened and leave the final protection for endangered species where it is, is that going to meet any great objection from any of you?

Mr. GARRETT. I would have to examine the amendment, Senator, and consult with my associates before I would be able to answer that question.

Senator STEVENS. The existing endangered species authority is with Interior.

I am inclined to agree with you that it ought to be with the Smithsonian. In any event, if we are adding these new categories and there is a disruption of the NOAA authority, I think we are further complicating things.

I will ask the staff to show it to you before we offer it.

Mr. GARRETT. Thank you.

Senator STEVENS. I was asking the Federal agency people this morning questions concerning procedural aspects of this. Do any of you have any specific suggestions for time frames with regard to either the review of the management potential of a State or the time frame with regard to what is a proper notice before an animal is made subject to the provisions of this act which would impose the Federal criminal penalty for taking?

Dr. GRANDY. I would say a minimum of 60 days' notice through publication in the Register.

Senator STEVENS. Mr. Garrett, does that seem reasonable?

Mr. GARRETT. I concur with that.

Senator STEVENS. Mr. Gottschalk?

Mr. GOTTSCHALK. I am not sure I quite understand all that is involved here, Senator.

Senator STEVENS. Let me make sure we understand it, because I am going to rely on this record when I talk to my colleagues in the committee when the markup comes.

There is no time frame in it specifically now, as I understand. There are two levels of preemption.

One is preemption of the management program itself. The second is the total preemption that the species is listed as either endangered or likely to become endangered.

The first involves, as I take it from your prior remarks, in your opinion, a formal requirement for consultation and notice to the State, and I think we are talking about some period to comply or change. What is a reasonable period with regard to the management program to define a deficiency in a management program that in and of itself is likely to lead to having a species under the jurisdiction of the state being endangered?

That is one thing. That is a general classification.

You remarked about this, too. What is a reasonable period for that?

Mr. GOTTSCHALK. If we are talking about what period of time would be necessary for a state to be advised of a deficiency and then the time that it would require to bring itself up to an acceptable level, it seems to me that the very minimum would be on the order of 6 months, and then only on the proviso that it would be during this period that they would develop an appropriate plan.

Obviously, they would not have an opportunity to put that plan into operation and to execute it and to produce results in the 6-months' period. So it would take substantially longer to demonstrate their capability, and I doubt it very much frankly if that could be effectively written into a statute. But I would say a minimum of 6 months for the process of notifying the State of deficiencies and calling upon the State to present to the Secretary if not proof at least the documentation of amended plans and plans which might meet his acceptance.

Senator STEVENS. What about a specific species? Take Dr. Grandy's comment and Mr. Garrett's, I think they addressed themselves to specific species notices.

Do you agree with 60 days there?

Mr. GOTTSCHALK. I think that is probably a little too short a period considering how things work in both the Federal and State bureaucracies. It may not seem like much, but I would think at least 90 days just for the exchange of ideas and final determination after consultation that an animal should be placed on one of the lists. Ninety days would sound more reasonable to me than 60.

Senator STEVENS. But you would have no objection to a management procedure if it could be demonstrated?

Mr. GOTTSCHALK. No, I think we would have to accept this, although I find it difficult to visualize management situations, although when I think about it just now, I think of the endangered Devil's Hole pup fish out in Nevada. That was sort of a management situation, so I can see how it could exist.

It might be that 60 days would have to be amended with a management provision.

Senator STEVENS. Dr. Jahn, would you want to answer that?

Dr. JAHN. I think that 60 days is too constrictive a time period when you realize we are dealing with one office in Washington, D.C., and then graduating out to 50 States, that could potentially be involved in a widely distributed species. I am in favor of 90 days.

In the first suggested time period of 6 months, I think that is realistic, and you might call it a declaration of planning in which you state your intentions. This procedure is used.

I might just add as a point of information at the present time the Council on Environmental Quality in the review of impact statements

has moved from 30 days to 45 days and even longer in some situations. The experience has been that the 30 days and the 45 days in some cases has been too constricted to review a statement.

Here we are asking for the formulation and the design of a specific plan. So, I think a longer period would be in order.

Senator STEVENS. Dr. Grandy?

Dr. GRANDY. Just one other comment:

In some of the bills which I have seen, I think S. 1983 and in the new committee print, there is a procedure for petitioning the Secretary to list a species, and I presume also to delist a species if the petitioner had adequate information.

I would like to suggest in addition to having a minimum time frame, 90 days, I would have no objection to 90 days either, certainly; that there be some sort of maximum time frame in terms of response to the petition.

Senator STEVENS. You mean when there is a petition for delisting or a petition for delisting?

Dr. GRANDY. Right.

If you have a minimum of 90 days, maybe [a maximum of 180] or a maximum of 120, something like that; so that the petitioner gets his response in a reasonable period of time.

Senator STEVENS. Lastly, I really didn't break down the question when I referred it to you, and the rest here, with regard to the administrative capability of a State, do you object to a longer time frame concerning a notice in effect, I take it that would be a notice in the Federal agency felt the management program for a particular species was inadequate and what would be required would be some type of response from the State, that that would be such a procedure that it would warrant a longer period of time than the 90 days dealing with a particular species.

Dr. GRANDY. I am certain it would take longer.

Mr. LENZINI. Six months was mentioned. However, the time necessary to cure the deficiency depends on what the deficiency is. If it is one in which there is an absence of proper authority, then the issue is up to the next session of the legislature. It may be that it ought to be 6 months or the end of the next regularly scheduled State legislature, whichever was later.

Senator STEVENS. I take it that is one of the things that is being raised now about my State with regard to the plan for ocean mammals, the law currently provides a mechanism for taking. The Commerce people say they are not going to approve the State's petition, as I understood them this morning, unless that's taken out.

I would not want to see a hiatus in management either. That is the big problem. Initially, that is the provision that is in the no fault bill, until the close of the next session of the legislature. It is not a bad suggestion.

Gentlemen, you have been very patient with me. I want to thank you very much. I do hope we can make this a meaningful bill.

We do want to have a good bill, one that works, and not one that leads to further confusion as far as the relationships of the State agencies and the Federal agencies involved, and I think you have contributed substantially at least to my understanding as to what your objectives are.

I thank you for your courtesy.
 [The statements follow:]

STATEMENT OF TOM GARRETT, WILDLIFE DIRECTOR, FRIENDS OF THE EARTH

Mr. Chairman, I am Tom Garrett, wildlife director for Friends of the Earth, a national environmental organization with offices at 620 C St. SE, Washington, DC 20003. I appreciate this opportunity to testify.

Friends of the Earth strongly endorses the basic features of S. 1592 and S. 1983. These bills remedy a salient defect of the Endangered Species Act of 1969, which contained no provisions for protecting domestic endangered species. They have also eschewed the egregious concept of "world wide extinction," which further crippled the 1969 Act.

Of the bills now under consideration, S. 1983 appears to be clearly superior. It embodies many of the suggestions made by conservationists before this Committee last year, and before the House Committee earlier this year. We commend and thank Mr. Williams for his initiative in developing this outstanding bill.

We consider the definition of "take" included in Mr. Williams' bill to be essential if the problems confronting endangered animals are to be meaningfully dealt with in this legislation. An animal or a plant is just as dead if it is killed by some concomitant of progress, such as industrial poisoning, suburban or recreational development, inundation or dessication, as though it were deliberately shot or uprooted. In a sense it is perhaps "deader", since associated living components of its local habitat will also have been affected, and opportunity for its kind to re-establish itself in the place may be irrevocably lost.

Equally improved and enlightened language is included in section 4 of S. 1983, in which the present or threatened destruction of habitat, or inadequate regulatory mechanisms, may provide grounds for listing an animal as endangered, or when the status of an animal is unknown. Under the 1969 Act, efforts to achieve listing of an animal have often been frustrated by assertions that the status of an animal is unknown. We agree with Senator Williams that if the status of an animal is "unknown", this may be taken as *prima facie* evidence of its rarity. The safe course is therefore to list the animal or plant, with the burden of proof regarding its status thereafter resting with those who may wish to molest the species or sub-species, or remove it from the list.

We are pleased at the inclusion of plants within this protection. Aside from the intrinsic worth of given plants, the survival of animal species is frequently contingent upon their availability. For example, the Saguaro cactus is now threatened in the United States. If the Saguaro disappears, the survival of the elf owl becomes problematical. Other living forms directly or indirectly dependent upon the Saguaro will disappear.

We particularly welcome the emphasis on land acquisition in the bills before this Committee. It should be obvious to any of us that if we do not preserve the habitat of species, and the integrity of biotic communities, whether or not plants or animals are protected from deliberate molestation becomes, eventually, academic. If the Congress is genuinely serious in its determination to protect hardpressed species, it must not only provide authority to purchase lands, but must provide ample appropriations. The agencies involved in purchasing must move promptly to insure the habitat now, before vested commercial interests, or competing State or Federal agencies have staked a claim.

We are delighted with section 6(e) of S. 1983, guaranteeing the States the privilege of enacting and enforcing stronger legislation, and with the much needed section placing rather onerous record keeping burdens on importers.

We are equally delighted with section 5(e) of Senator Williams' bill, permitting the funding of projects on behalf of endangered species abroad, under the Agricultural Trade, Development, and Assistance Act. This is an extremely valuable initiative which we certainly hope will appear in the final version reported by the Committee.

We strongly endorse section 6, paragraph (3) of S. 1592 permitting the rescinding of grazing permits, or hunting licenses, by the Secretary in response to the molestation of endangered species. We would like to see this section expanded to authorize cancellation of other types of federal permits when it can be shown that activities conducted by firms holding such permits are in violation of the Act.

Mr. Chairman, while we find a great deal to praise in the bills before you, we find some common deficiencies:

(1) A citizens suit provision should be added. This will greatly stimulate proper enforcement, and strengthen the Act.

(2) We are pleased with section 7(d), permitting the listing of nonendangered species which are indistinguishable from endangered species. However, we wonder if section 4 provides enough protection to certain isolated population stocks of major species, which may be gravely endangered though the species is not in severe difficulty. The problem of transshipment smuggling will probably be greatly ameliorated when the International Convention on Trade in Certain Species of Wildlife, recently signed in Washington by over eighty nations, goes into effect. Nonetheless, we feel that evidence that a major population stock has become depleted should result in the listing of the entire species, at least until we have assurances that illegal transshipment is under control.

(3) In our view, the only justification for taking an endangered species should be that such taking was designed to benefit the species. We do not, therefore, believe that endangered animals should be used in medical research, or in any other research not designed to benefit the species. We must guard against sanctioning the kind of "special scientific permits" issued by the International Whaling Commission for the killing, and of course, commercial processing, of ostensibly protected species.

We are adamantly opposed to language which can be construed as allowing the automatic granting of one year economic hardship permits, as occurred under the 1969 Act. We request language in section 8(b) which makes the issuance of such a hardship permit contingent upon the findings of a public hearing, and which permits the Secretary discretion to set a "phase out" quota only if it can be demonstrated that such a quota will not have a deleterious effect on the species or stocks being listed.

A commercial operation based on products taken from endangered species is obviously, and often deliberately, self-effacing. The willingness of certain people to take short term profits through trafficking in such endangered and vanishing species is a major factor in their disappearance. Why is it necessary to defer to such irresponsible behavior?

(4) We oppose the granting of responsibility for listing other than commercial fish to NOAA. The fact that NOAA has jurisdiction for most marine mammals under the Marine Mammal Protection Act makes it all the more important that the listing of the animals under this Act be in the hands of the Department of the Interior. This provides a kind of fail safe mechanism, in which inadequate administration by one agency can be corrected by proper administration by the other.

We have a very high regard for Dr. White, Mr. Wallace, Dr. Aron, and other NOAA officials. We find them to be energetic and well intentioned. But we do feel that the possibility that commercial pressures will, over a period of time, affect administration in this area is inherently greater within the Department of Commerce than within the Department of the Interior. We have not forgotten that the Department of Commerce's proposed amendments to the Marine Mammal Bill would virtually have destroyed that legislation.

(6) Section 6, appearing in S. 1983, is generally valuable and necessary. While we well understand that state policies are often more enlightened than federal policies, and that close cooperation with the states is absolutely essential, we fear that yielding to the states on matters of land purchase may often jeopardize the setting aside of sanctuaries. Many state wildlife commissions have become, in effect, commercial bureaucracies which are far more interested in selling hunting licenses than in perpetuating endangered species, and would be loathe to remove habitat areas from their own jurisdiction. An example which comes immediately to mind is the hostility of the California Fish and Game Commission to the Owens Valley Tule Elk Sanctuary. We hope that the legislative history of a bill which may be reported will indicate that federal consultation with states on habitat acquisition will not restrict the Secretary from acting as he determines best from the standpoint of affected species. We would feel much more comfortable about paragraph (e) if a hearing conducted by a federal examiner were required before taking was permitted.

(7) The signing of the International Convention on Trade In Certain Species would appear to necessitate a section designed to integrate this legislation with the Convention. Such a section, in my view, should include language which requires the Secretary to list animals appearing on the appendices to the Convention, and which instructs the Secretary of State to propose an amendment through the procedure specified in Article XV of the Convention, in order to attempt to add to the appendices animals on our endangered species lists which do not appear in the appendices.

(8) The Endangered Species Act of 1969 included a section instructing the Secretary of State to negotiate a meeting designed to limit international trade in endangered animals. This outstanding provision bore fruit with the recently concluded international conference. We would like to suggest that section 5(f) of this legislation contain language instructing the State Department to attempt to convene another International Conference, this one aiming at measures to preserve, the *habitat* of endangered species.

In closing, Mr. Chairman, I would like to emphasize again that it is ultimately immaterial whether or not an animal is deliberately molested if its habitat is not preserved. Habitat acquisition must be a major goal of this legislation. At the same time the complete inadequacy of the traditional definition of "take" for the year 1973 must be acknowledged. "Take" must be broadened to include habitat degradation.

We appear caught up today in a metastacizing biological disaster. The precipitous decline of our fellow living creatures throughout the planet mirrors our own chance of avoiding a prodigious calamity. If we cannot contain the proliferation of our own kind, if we will not restrain our nihilistic and randomly destructive technology, the animals which we are here striving to save will not survive, and our own "harvest" will surely be at hand.

Thank you again for this opportunity to testify. We shall submit specific proposals for amendments, and in support of points which we have raised.

STATEMENT OF JOHN S. GOTTSCHALK, EXECUTIVE VICE-PRESIDENT, INTERNATIONAL ASSOCIATION OF GAME, FISH, AND CONSERVATION COMMISSIONERS

Mr. Chairman, I am John S. Gottschalk, Executive Vice-President, of the International Association of Game, Fish and Conservation Commissioners, an organization which numbers among its government members the fish and wildlife agencies of all fifty States, five Canadian provinces and the Commonwealth of Puerto Rico. By professional training I am a fisheries biologist and I have devoted a career of some forty years to fish and wildlife conservation at the state and federal level.

The International Association enthusiastically supports improved programs for endangered fish and wildlife. We support expansion of the concept of endangerment in section 2(c) of S. 1592 to include species or subspecies which are likely within the foreseeable future to become threatened with extinction. Special efforts aimed at restoration of a species should not be delayed until an end-of-the-line condition obtains. We also believe it is desirable to list species as endangered or threatened in those situations where such a condition exists throughout a significant portion of its range. Under present law such a condition must obtain throughout the entire range of a species or subspecies for listing to occur. It should be clear, however, that where a species or subspecies is declared to be threatened or endangered in only a portion of its range, the legislation does not mandate application of protective measures throughout the remainder of its range where the species may be abundant. For example, the American alligator was initially considered to be endangered throughout its range but is now recognized as abundant in the State of Louisiana. Despite improvements to the existing federal program which I have mentioned, the International Association cannot endorse S. 1592 as presently drawn. If the purpose of this legislation is to establish a program for conservation and restoration of endangered species, we believe the means proposed are plainly inadequate.

There is little doubt that man's abuse of his environment poses the gravest danger to fish and wildlife today. Loss of critical habitat areas through the encroachments of civilization continues to bring about the decline of too many species. The most damaging of these activities are well-known: drain and fill operations, dredging, ditching, channelizing, overgrazing of fragile cover, pesticides, siltation of streams. Any one or a combination of these manipulations may constitute the final blow to a dwindling species. The most cursory examination of the compilation of threatened wildlife of the United States by the Fish and Wildlife Service discloses that habitat alteration is almost invariably listed as the reason for decline of such species. In short, it is man's impact on a complex of habitats which have evolved over the centuries that has brought many species to the point of endangerment.

Mr. Chairman, we urge consideration of the following points which must be incorporated into endangered species legislation if it is to be effective rather than cosmetic:

First, such legislation should incorporate the well-established fact that while legal protection and law enforcement are needed, maintenance of suitable habitat is vital to the restoration of endangered species. Because taking of native species is not the reason for their decline the prohibition on taking contained in section 4 can be expected to be of little utility. In the process of establishing the federal prohibition it will be necessary of course to preempt state authority which has traditionally been the primary authority over resident species of fish and wildlife. Once the existing system of state authority has been supplanted it will be incumbent upon the federal government to enforce its prohibitions. Yet it is inconceivable that the job can be accomplished nationwide by the 155 enforcement personnel of the Bureau of Sport Fisheries and Wildlife. One need only refer to the direct loss of eagles through unlawful taking which is a continuing problem despite the presence since 1940 of federal legislation protecting the bald eagle. Accordingly, federal legislation should come to grips more forcefully with the crucial issue of habitat. To this end we urge a more specific directive by Congress designed to stem the disappearance of critical habitat. Section 3(d) should declare that actions authorized, funded, regulated or administered by federal departments and agencies shall not directly or indirectly result in destruction or modification of critical habitat of species listed as endangered or threatened.

Second, instead of supplanting state wildlife programs the legislation should provide a mechanism for the most effective use of federal and state resources to accomplish the extensive task of preserving and restoring endangered and threatened species. The mechanism should be a cooperative partnership which builds upon and encourages state programs for endangered species. We have submitted to subcommittee staff a summary of endangered species programs being conducted by state wildlife agencies. Measures are being taken for endangered wildlife in virtually every state and in 35 states formal programs for endangered species are in operation. The International Association in 1972 prepared model legislation to establish a comprehensive program for nongame and endangered species which serves as the basis for legislation pending in several states. State wildlife agencies possess expertise and staffs of qualified biologists and enforcement officers that should be utilized for maximum efficiency. Moreover, it is essential to establish clear procedures for involving state wildlife agencies in the determination of what species are endangered or threatened. In sum, we would support endangered species legislation which is preemptive of state authority over resident species only when it is clearly evident that a particular state is either unwilling or unable to mount adequate programs. To this end Congress should establish specific criteria against which the Secretary could assess state programs. Then, if the states measure up, there would be no point in federal preemption.

The danger of supplanting the states, however, is clearly evident. Section 4(b) of S. 1592 directs the Secretary to issue regulations for the conservation, protection, restoration and propagation of species or subspecies listed as threatened. Yet the federal government is plainly not equipped to carry out wildlife management programs extending into every nook and cranny of the United States. In a recent study the Interior Department's Office of Survey and Review concluded that "The National Wildlife Refuge System is seriously underfinanced. Many existing facilities are badly in need of repair; some are literally falling apart." In this vital activity and in others as well, the Bureau of Sport Fisheries and Wildlife is already overcommitted and it would in our view be a grave setback for endangered species programs if state authority in this area were supplanted. We believe that such a setback has in fact occurred as a result of preemption of state programs for marine mammals.

Third, the Congress has repeatedly emphasized the deep significance of the Nation's wildlife resources to the American public. This emphasis may now be translated into an action program based on an assessment of national needs and cooperation with the states. Congress should encourage state programs by providing federal grant-in-aid assistance to be matched by state funds in order to carry out recovery programs for endangered and threatened species. In order to assure state programs that are effective, federal assistance should be available only to states whose programs measure up to the specific criteria mentioned earlier. Programs of state wildlife agencies have traditionally been supported by sportsmen's license revenues and funds derived from federal excise taxes on the sale of

arms, ammunition and fishing gear. Little or no general tax monies have hitherto been involved. As public awareness has broadened to encompass nongame species, these traditional sources are proving inadequate and new funding initiatives are being taken such as proceeds from sale of personalized auto tags, sale of wildlife stamps and the soft drink tax.

Mr. Chairman, this Committee last year reported a bill (S. 3818, S. Rep. No. 92-1136) which improved substantially on the Administration proposal then before the Congress and which went a long way toward establishing the kind of mechanism for federal-state cooperation we believe to be essential. We urge that the same approach be adopted this year and we would be glad to submit to the Committee our specific suggestions for amendment of S. 1592.

Mr. Chairman, I appreciate this opportunity to testify on this important subject.

STATEMENT OF DR. JOHN W. GRANDY IV, ADMINISTRATIVE ASSISTANT FOR WILDLIFE, NATIONAL PARKS AND CONSERVATION ASSOCIATION

My name is John W. Grandy, IV. I am Administrative Assistant for Wildlife at the National Parks and Conservation Association, 1701 18th Street N.W., Washington, D.C. 20009. I very much appreciate the opportunity to appear before this panel in such distinguished company.

The NPCA is an independent, private, non-profit, membership institution, educational and scientific in character, with over 50,000 members throughout the United States and abroad, all of whom receive the monthly *National Parks and Conservation Magazine: The Environmental Journal*.

I think the following general points should be included in any endangered species law:

(1) The definition of "take," in the case of animals, should include "threatened destruction, modification, or curtailment of habitat." In my opinion, adequate habitat is the key to survival of most endangered species. Coupled with that should be the ability for the Secretary to prohibit "taking."

(2) The purposes of the act should be to restore endangered species so that such species are no longer covered under the Act. Regulations regarding when an endangered species may be taken should be revised to reflect the need for restoration.

(3) Species should be defined as a species, sub-species, or substantially isolated population segment of a species or sub-species. In this way, we as managers would be dealing with manageable units. In our opinion, a management system will not be flexible enough to meet the needs of the organisms unless managers are able to use the best techniques available for managing each population segment.

(4) In the public interest, the Federal Government should have regulatory authority over taking an endangered species. States should be provided money on a co-operative basis for managing endangered species and aiding in enforcement of the laws.

(5) Jurisdiction over all endangered fauna should reside with the Secretary of the Interior.

In conclusion, the best legislation which I had seen by June 15, 1973, was the bill introduced by Senator Williams (N.J.), S. 1983. I will submit detailed suggestions regarding the bill; however, in total, S. 1983, if enacted, will provide a tremendous push in the effort to save endangered species.

Thank you for the opportunity to present this statement. I will be happy to try to answer any questions you may have.

STATEMENT OF DR. LAURENCE R. JAHN, PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE

Mr. Chairman, I am Laurence R. Jahn, Vice President of the Wildlife Management Institute with headquarters in Washington, D.C. The Institute's program has been devoted to the restoration and improved management of renewable natural resources in the public interest for more than sixty years.

Although the Institute endorses the basic objective of S. 1592, we believe the bill is inadequate and unresponsive. Strong and coordinated effort is needed at international, national and state levels to identify and aid threatened and endangered species of wildlife and plants. S. 1592 does not fill this basic need.

There are two main weaknesses in this bill: (1) it is not predicated upon the proven principles of scientific wildlife management, and (2) it tends to disjoin rather than bring together federal and state agencies having responsibilities for the perpetuation of wildlife.

The only way to protect and enhance endangered species or any other wildlife, in our opinion, is with scientific approaches to problem solving. The great progress that has been made in managing wildlife over the last fifty years has come about through the deliberate application of proven scientific methods. Most management attempts evolving out of emotional reaction to problems have proven to be dismal failures.

We do not think that the thrust of this legislation should be limited merely to the protection of endangered species. It should make direct reference to restoring species to the highest practical level on all remaining and future habitats.

Thus, it should be pointed strongly toward preserving and creating critical habitat for endangered species. Further, we believe the terms "conservation" and "management" used frequently in the text, should be defined. As the committee knows, there has been confusion over their actual meaning. Congress last year wrote a sound definition of conservation and management into the Marine Mammal Protection Act. We believe the committee could strengthen the scientific thrust and the goals of the pending proposal by including that same definition, if only by reference.

S. 1592 does not seek to make the best use of available expertise in managing endangered species. It virtually ignores the great body of state expertise, proposing instead a questionable unilateral extension of federal authority into an area of historic state responsibility. Such an extension of authority, if granted, possibly would be inimical to the widely supported objective of the bill. There is no basis in fact to assume that endangered species will automatically be better off under federal control. It is overly optimistic, in fact, to expect good results from one poorly financed and undermanned federal agency, the Bureau of Sport Fisheries and Wildlife. S. 1592 is deficient in that it ignores the good that can be accomplished by working with and through the fifty state conservation agencies that have legal responsibilities to care for resident fish and wildlife resources.

We question whether an all-federal program of the magnitude required to assist endangered wildlife, at home and around the world, can be assured of budgetary and appropriations support even if the other practical problems posed by S. 1592 can be resolved. Although the bill authorizes no specific appropriations, this new federal authority, if it is to succeed, will require considerable expansion of the research, management, and enforcement staffs of the Bureau of Sport, Fisheries and Wildlife.

The Bureau currently lacks adequate personnel and financing to enforce fully the laws and to implement programs for which it already is responsible. Just recently it was announced that 26 units of the national wildlife refuge system in 15 states face major reductions in staffing and maintenance due to lack of funding. Several of those refuges provide habitat for endangered wildlife, the subject of the pending proposal.

This is not said in criticism. We are vitally concerned about the Bureau and its programs. But we are not aware of any relaxation of budget or manpower ceilings that will permit expansion of the agency's law enforcement and scientific staff to anywhere near the capability required to respond to the authority that would be granted under S. 1592. Only last year, the Administration reached for authority over marine mammals in much the same manner as proposed in S. 1592. Its failure to provide appropriations and manpower support of that newly gained authority offers no reason for encouragement with respect to the pending bill.

This is made evident by examination of the implications of S. 1592 in terms of law enforcement, a most important activity in any successful fish and wildlife program, and of great importance with species sought for commercial purposes. Commercialization, of course, is one of the major threats to many of the world's wildlife. A second major threat is habitat contamination and destruction. Law enforcement can help control illegal commercialization of wildlife; it can do relatively little about habitat destruction.

The Bureau of Sport Fisheries and Wildlife has funding this fiscal year for 158 law enforcement agents. These men operate throughout the United States, including Hawaii and Alaska. To put this small number of federal wildlife enforcement officers into national perspective, I refer to an authoritative study of state conservation law enforcement completed last year by William B. Morse, the Institute's western field representative. According to Morse's data, any one of ten states has more wildlife law enforcement officers than has the federal government for

the whole country. In the fifty state wildlife agencies, there are more than 5,800 full-time law enforcement agents. They comprise 32.3 percent of all employees in state fish and wildlife agencies. An average of slightly more than 27 percent of the state agencies' budget outlays is devoted to wildlife enforcement and more than \$72 million was invested in this work by the states during the most recent year of record. In contrast, the Federal Government, through the Bureau of Sport Fisheries and Wildlife invested only \$6.7 million in enforcement in fiscal year 1973.

The Bureau is budgeted for approximately 3,900 total employees—scientific, enforcement, clerical, etc.—during the current fiscal year. State wildlife agencies have more than 5,400 biologists and managers in the field, more than 5,800 law enforcement agents, and almost 18,000 employees overall. The total appropriated funds allotted the Bureau this year (FY 1973) for resource management amounted to \$75.6 million. An additional \$53.1 million was collected from the manufacturers' excise taxes on items of hunting and fishing equipment. But most of that was allocated to the states under the long-standing federal aid fish and wildlife restoration programs. For this year, the states have available \$214.3 million from 1972 license receipts alone, not including any moneys appropriated from general revenues or federal aid.

At least 31 states already are conducting programs to identify and collect information about threatened resident wildlife and to design programs for their protection. Others are expanding their programs to include all species of wildlife. Through the International Association of Game, Fish and Conservation Commissioners, the state agencies have developed a Model Endangered Species Law. We expect many state legislatures will adopt this Model Law at the earliest practicable time. It also currently is under consideration by the Council of State Governments for inclusion in its 1974 compilation of suggested state legislation.

Section 4(a) of S. 1592 clearly provides for the extension of management authority into resident endangered species, an area historically handled by the states. In section 9(a), the Secretary also would be given authority to manage resident fish and wildlife classified as endangered or likely to be endangered everywhere in a state, regardless of land ownership. The bills would do this by amending the second sentence of subsection 4(c) of the Act of October 15, 1966 to read: "With the exception of endangered species listed by the Secretary pursuant to section 4 of the Endangered Species Conservation Act of 1973, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

The sentence the proposed amendment would supplant, clearly upholds and sustains the authority of the states to manage resident fish and wildlife, including designating endangered species thereof, on all lands within the state other than those in federal wildlife refuges or similar areas. We hope this amendment will not be adopted.

Those who favor S. 1592 as written may argue that the bill will give the states an opportunity to cooperate. The bill contemplates this, of course. But the history of federal-state relations makes clear that states cooperate more readily and that goals are more fully attained when the states are given responsibility and a mission. As presently written, S. 1592 would take authority the states now have and have had since the founding of this nation. In essence, the bill would pre-empt state authority over resident species of wildlife and then request that the states do most of the work in administering endangered species programs, including those on many federal areas. That does not appear to be the best way to gain cooperation and to protect the wildlife resource. Further, we are not encouraged when we hear that a federal wildlife agency, with less than one-fourth the employees and less than one-half the money of state agencies, would be given primary responsibility in this area.

We urge that the committee view the opportunities inherent in this subject from the standpoint of creating a forcing action on the states, a procedure that has been followed many times on matters of national concern. It enables the Federal Government to alert all states to a matter of public concern and to give them an opportunity to respond if they have not already done so. The forcing-action procedure assures more efficient and effective use of federal and state funds and manpower, both of which are not unlimited at either level. We strongly believe that a sound and productive endangered species program, a program making the most efficient and effective use of available funds and manpower, should involve the Bureau of Sport Fisheries and Wildlife and the state conservation agencies in a cooperative effort.

Such a cooperative undertaking should:

- (1) Recognize the necessity for the scientific handling of wildlife.
- (2) Recognize and build on the traditional responsibilities of both the federal and state governments for wildlife.
- (3) Set federal standards to be achieved by the states.
- (4) Provide federal financial assistance on a cost-sharing basis and link acceptance of the assistance with overall federal program coordination.
- (5) Provide for federal assumption of responsibility to protect designated endangered fish and wildlife in those states either (a) refusing to participate in the program or (b) failing to live up to the national standards set for it.

This is the basic structure of the successful Federal Aid in Wildlife Restoration Act of 1937 and the Federal Aid in Sport Fish Restoration Act of 1950. We note also that this same joint federal-state relationship is included in S. 887, the animal damage control bill now under consideration by this committee. This same plan also was approved for animal damage control activities by the House during the 92nd Congress with the passage of H.R. 13152.

We believe the forcing-action procedure is the most sensible approach to follow with the endangered species proposal. In fact, we firmly believe that only with strong action at the state level through state fish and wildlife agencies, with the Federal Government working in interstate and international areas, and with good communications and cooperative agreements between the two levels, can the American people be assured of a strong national attack on the problem of endangered and threatened wildlife.

A final point I wish to emphasize, Mr. Chairman, is that the history of American wildlife restoration has been one of rescuing many species from extinction. There is nothing new or unique about the "likely to be threatened" concept of the pending bills. The state and federal fish and wildlife agencies have been involved in such work since the very beginning. The problem is somewhat more urgent today, and will be in the years ahead, because of man's increasing contamination and occupation of wildlife and fish habitat. Among the many rescued species are some that are regarded as common today—deer, elk, and pronghorns to name a few. Big horn sheep and mountain goats have been restored to many areas where they once were hunted ruthlessly by our pioneer forefathers. Sea otters have been reintroduced in areas of historic range, the fur seal is well out of danger, and wild turkeys now occupy more of North America than they did in colonial times.

Wildlife restoration in the United States has been a success story. The job is not finished, because expanding human populations and related development continue to destroy natural habitat. Wildlife restoration has succeeded because of the individual and cooperative programs of federal and state wildlife agencies. No other nation in the world possesses the depth of professional wildlife management talent and organization as does the United States.

The best way to guarantee success for the objective of the proposal before the committee, in our view, is to build upon this competence. We urge the committee to take advantage of existing combined federal-state capability to restore and protect wildlife. Full partnership between federal and state wildlife authorities will assure the success of this urgently needed program. This partnership can be accomplished by amending the proposal in the way we suggest.

Senator STEVENS. This subcommittee will stand in recess until 10 a.m. Thursday morning.

[Whereupon, at 3:35 p.m., June 18, 1973, the hearing was recessed, to reconvene at 10 a.m., June 21, 1973.]

ENDANGERED SPECIES ACT OF 1973

THURSDAY, JUNE 21, 1973

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 9:30 a.m. in room 155, Russell Senate Office Building, Hon. Frank E. Moss presiding.

Senator Moss. The subcommittee will come to order. I am pleased to open this second day of hearings on legislation proposed to protect, preserve and propagate endangered species of plants and wildlife.

Our first witness this morning is the distinguished chairman of the Committee on Labor and Public Welfare, Senator Williams. He is the sponsor of S. 1983, one of the two bills we will be considering this morning.

This bill, basically, pays attention to destruction of habitat, the greatest threat presently facing rare and endangered species. Unlike previous animal protection legislation which has stressed the direct taking of animals by man and stressed criminal penalties for such taking, Senator Williams' bill focuses on slowing our destruction of the natural environment of these species in order that they will not only be protected but allowed to once again flourish in their natural surroundings. Because it clearly addresses the problem of protecting habitats, this is a particularly far-sighted legislative proposition, one which may mark a turning point in our animal protection efforts.

Senator, we thank you for joining us this morning to discuss your proposal and please go ahead with your testimony.

STATEMENT OF HON. HARRISON A. WILLIAMS, U.S. SENATOR FROM NEW JERSEY

Senator WILLIAMS. Thank you very much, Mr. Chairman.

I have a prepared statement. It might be more efficient if I read the statement.

Senator Moss. That would be fine.

Senator WILLIAMS. If I don't, I might take longer.

Senator Moss. I have found that often happens.

Senator WILLIAMS. It is a pleasure to appear before your subcommittee this morning in behalf of my bill, S. 1983, "The Endangered Species Conservation Act of 1973."

This bill would provide increased protection by the Federal Government for endangered species of fish and wildlife. In addition, it would initiate a program of protection for endangered flora. This bill, in many ways is very similar to Senator Magnuson's bill. This is one area where we take on an additional burden of concern. That is with endangered flora, as I understand it.

The Endangered Species Act of 1966 laid the foundation for this country's efforts to conserve and protect endangered species of fish and wildlife.

As you know, Mr. Chairman, under that law and its 1969 amendments, the Secretary of the Interior is directed to maintain lists of species and subspecies of fish and wildlife determined to be threatened with extinction.

One list is composed of native—that is, domestic—endangered wildlife and the other is made up of foreign, endangered wildlife. Further, the present law prohibits importation of a species or subspecies of fish or wildlife which has been listed as threatened with worldwide extinction. However, existing law does not make the killing, export, or interstate transportation of an endangered species a Federal offense.

On the domestic endangered list alone, 109 species and subspecies of fish and wildlife are listed as threatened with extinction. Over 300 species and subspecies of fish and wildlife are contained on the foreign endangered list.

In addition, the Department of the Interior estimates there are at least 100 native species of fish and wildlife whose status is unknown and which may be in danger.

On a worldwide basis, the International Union for the Conservation of Nature and Natural Resources lists as rare or endangered more than 550 species of birds and mammals. Adding reptiles and other animals to this list brings the worldwide figure to an estimated 1,000 endangered species.

Nevertheless, there is no Federal law clearly prohibiting the killing of any endangered species—with the exception of certain ocean mammals or birds protected by the Migratory Bird Conservation Act and the Bald Eagle Act. There are various and complicated reasons for the precarious status of many species of the world's wildlife. Undoubtedly the major reason is overhunting, whether that hunting be for food, or clothing or commercial purposes, to protect livestock or merely for sport. The alteration of our environment to make way for urbanization has also contributed significantly to the demise of our wildlife.

I think I come from an area that fits that category probably more clearly than the other categories of reasons for endangered species. But whatever the reason, we all share the responsibility, we all have a responsibility to protect those species already endangered and prevent any others from being pushed to that precarious state.

Of course, there are some who question the need for protecting wildlife. And, it is undoubtedly true that we might be able to get along without many of the creatures who share our world. We might be able to do without many of the things which seem to be nonessential, but which give us pleasure, and make life more interesting and more complete. But that does not mean we should.

In early times, many forms of wildlife were necessary to man's survival. They provided essential items of food and clothing. However, now that we possess the technical knowledge and skill to manufacture and produce many of the items which we once depended upon animals for, their economical value has greatly decreased. Perhaps our wisdom is not yet extensive enough to grasp the full meaning of forever

removing various forms of life from our environment. Every living thing has its own unique role in a given ecosystem. Whenever that delicate balance of nature is disturbed, for whatever reason and in whatever way, the entire fragile system begins to disintegrate.

The effect of the loss of a given species of wildlife may not be immediately discernible but something irreplaceable has been lost. That alone, the fact that our wildlife is irreplaceable, should be reason enough to try to save it. Unfortunately, man has repeatedly demonstrated his ability to completely annihilate a species of wildlife, or bring it to the verge of extinction. A classic example of this is the story of the passenger pigeon. According to some accounts in the early 1800's these birds numbered in the thousands of millions. It is difficult to comprehend that from these vast numbers, not one single living passenger pigeon exists today. The last survivor of the species died in the Cincinnati Zoo back in 1914. Today that bird is on public display in the Smithsonian Institution where it serves as a constant reminder of the thoughtlessness and greed of man.

The American buffalo came close to suffering a similar fate, and I could relate many other examples of man's total disregard for the creatures who share our world. However, my main purpose here today is to plead the case for our remaining wildlife. Some are still abundant and some, although dangerously depleted, can still be saved if we take effective action now. Some species can be saved by protection in their natural habitat. For others which have already come to the brink of extinction and whose original environment has been destroyed, it may be necessary to establish and maintain small breeding populations in refuges and in parks.

Protection is also needed for those whose status is unknown, and we must consider others which so closely resemble a species already listed as endangered as to make differentiation difficult and pose an additional threat to the endangered species. This is a very real problem.

These last two, I believe, are differences in the two bills that are before you, Mr. Chairman.

When dealing with subspecies of animals, as the present law requires and as S. 1983 would require, it takes a very skilled expert to distinguish the difference. The resemblance between many subspecies is extremely close. One example is the wolf. There are 12 to 16 recognized subspecies of the wolf in the Western Hemisphere. Three are presently listed as endangered. According to the Department of the Interior, it would be very difficult even for an expert to tell the differences between the various subspecies and virtually impossible for a layman.

Therefore, it is very likely that this factor constitutes a definite hazard to many species of endangered wildlife.

Very little information is available at the present time concerning the number of plants which are endangered, the reasons for their precarious position, and what can be done to restore them. However limited distribution of certain species of plants, mishandling by man, over-harvesting, and loss of suitable habitat are factors. A list of endangered plants of the United States is presently being compiled under the economic program at the Smithsonian, and definitive information in that respect will be available in the near future, including a list of rare and endangered plants. But estimates now available

indicate that in the 48 continental States and Alaska, perhaps 200 species of plants may tentatively be considered as extremely rare or endangered. Another 500 species of plants in Hawaii may be considered rare and endangered.

In 1971, the International Union for the Conservation of Nature and Natural Resources began to take a more active part in monitoring endangered and declining species of plants and biotic communities. They are presently maintaining files and surveying literature, on endangered plants. The very fact that so little is known about the subject makes it even more imperative that a program of protection be instituted. Through the provisions of S. 1983 this can be accomplished and rare and endangered species of plants can be saved.

Just a moment now to review the major provisions of the bill, Mr. Chairman. The Endangered Species Law, the present law, specifies that only those species and subspecies of fish and wildlife which have been found by the Secretary to be threatened with extinction may be listed as endangered. Therefore, under present law, protective measures may not be taken before a species has become so depleted that its continued survival is questionable.

S. 1983 would enlarge the definition of an endangered species to include not only those animals and plants which are presently endangered, but also those which are likely to become endangered, and those whose status is unknown.

Second, it would make the killing of an endangered species a Federal offense. It would prohibit the import, export, killing and interstate transportation of endangered species.

It would also prohibit the destruction, modification or curtailment of the habitat or range of any species of wildlife listed by the Secretary as endangered. In the case of flora, it would prohibit the collection, severance or removal of any flora listed as endangered.

S. 1983 would also authorize the Secretary to extend protection to any species or subspecies of fish, wildlife or flora which closely resembles in appearance a species which has been listed as endangered. This protection would be extended when substantial difficulty is posed to enforcement personnel in attempting to differentiate between the endangered and nonendangered species. I have discussed this earlier.

The taking of an endangered species would be permitted only under limited and strictly defined conditions. As contained in the present endangered species law, the Secretary is authorized to utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, the Fish and Wildlife Act and the Fish and Wildlife Coordination Act to carry out a program of conserving and protecting endangered wildlife as well as funds made available under the Land and Water Conservation Fund Act. This is an important provision because we must not only prohibit the taking of endangered species but we must do all we can to preserve the habitat in which they live.

Mr. Chairman, this bill also directs the Secretary to cooperate to the maximum extent practicable with the States in conserving and protecting endangered species.

Finally in this regard S. 1983 directs the Secretary to undertake an investigation and study regarding the functions and responsibilities which the States should have with respect to the management and protection of endangered species, and under this bill, jurisdiction over

all endangered species of wildlife would remain with the Secretary of the Interior. The Secretary of Agriculture would be given jurisdiction over all endangered plants.

Mr. Chairman, I cannot emphasize too strongly my firm belief that, as the numbers of our wildlife grow fewer, their true value grows greater. I believe that S. 1983 will help to assure that no more endangered species are permitted to vanish from the face of the earth.

I certainly appreciate your accommodation to my schedule, Mr. Chairman. I know that there are people who will follow whose professional lives take them far more intimately into this. Coming from a very metropolitan State, believe me, even metropolitan people know the value of preserving these species that are critically endangered or likely to be.

Senator Moss. Thank you very much, Senator Williams, for your very fine statement. It is most persuasive and I am sure will add greatly to the record.

I only have one or two questions and I know you have a commitment, as I do, to move on. Those of us who are concerned with the conservation of wildlife are often accused of failing to recognize the other interests of society such as community development.

Do you feel that your bill's provision for preservation of habitat is a threat to the future development of our economy and, if not, what benefits do you think society gains from positive efforts to protect the species and their habitats?

Senator WILLIAMS. At the very end I mentioned I am from a metropolitan State, highly urbanized. We run into this. We are beginning to recognize what we are doing, in development, to the natural habitats, not of animals, but birds. Along our coast, New Jersey seems to be a happy in-between, North and South. It has been, for how many years I do not know, the resting place on migration for a lot of migratory birds. We have just filled our bays and dredged the area and then backfilled and developed and I will tell you, we have come to the realization that we have made a serious mistake.

We are now putting development in balance with nature to a greater extent than we did maybe 10 or 15 years ago. It is a limiting factor on development. We are just going to have to find a method to preserve as much balance as we can in development and move into areas where we are not destroying natural habitat as much as we can.

We are all loaded up with this in terms of deep-water oil ports and atomic nuclear power and the whole business. I hope we will have the wisdom to do all—to meet our needs in development and energy.

Senator Moss. Do you think, then, that by long-range and more detailed planning we can find the balance where we can do the preservation and still provide for our economy?

Senator WILLIAMS. I certainly do. We have the land-use planning bill before us in the Congress. I am a strong supporter of it. I know there are those who think I am making a mistake, too. We have this classically in New Jersey, where we have had to, under State law, put in strong protective legislation for the natural environments.

Again this is bird life, not animal life.

Senator Moss. Do you see then an active role for the States in doing this as well?

Senator WILLIAMS. Absolutely, that is essential.

I think we put proper focus on States stimulus here in cooperation. Senator Moss. Should the Federal Government pre-empt the States if the States want to go ahead and have appropriate legislation?

Senator WILLIAMS. No. As a matter of fact, in our bill, we even say the State can pre-empt us if they can do a better job.

"Us" meaning the Federal establishment.

Senator Moss. That is the emphasis I had hoped to bring out. The States can step up and have enormous rigid control if that is the desire of the State and that would then take precedence over the basic Federal law.

Senator WILLIAMS. Yes. I think that is a wise approach.

We have seen it in other areas, we have seen it work in other areas.

Senator Moss. Thank you very much, Senator.

We are happy to accommodate you and I am going to have to move on to another hearing. This hearing will be in recess now until 10:30. Then we will proceed with further witnesses.

Thank you.

[Recess.]

Senator TUNNEY. The subcommittee will come to order.

It is with a sense of urgency that we reconvene this hearing today. The testimony presented at our first hearing on Monday emphasized there is no doubt that many species and subspecies are endangered and others are approaching that status. The reasons are varied. Habitat destruction, excessive exploitation, evolution and others can be cited.

This morning Senator Williams testified before Senator Moss as to the special threat posed to these species by man's accelerated development of our land.

Our generation can see the worlds "wildlife" as it currently exists. This has been accomplished by sound management, wise nonintervention, and by dumb luck.

Without the extension of the law which this legislation is intended to supply, active law enforcement, actively used treaties and increased public education, we will assure that future generations will be looking in vain for wildlife. This legislation was considered last year but failed to reach the President's desk. I do not believe that we can afford additional delay. There can be no excuse for either House failing to pass a strong Endangered Species Act of 1973.

In order to facilitate this passage, we would explore several instances in the short time available to us this morning. To maximize the use of our time, we ask the witnesses to summarize their statements in the shortest time as possible.

We will then direct questions to the panel. I wish to encourage an early dialog between the Chair and panelists on this issue. Despite the fact that we have cramped quarters, I hope that everybody will realize that it is not because the committee lacks interest in this legislation. It is just that other hearing rooms, unfortunately, were scheduled for other committees prior to this one being set down for hearings.

Will you please begin with your testimony?

STATEMENTS OF BERNARD FENSTERWALD, COUNSEL, COMMITTEE FOR HUMANE LEGISLATION; LEWIS REGENSTEIN, EXECUTIVE VICE PRESIDENT, THE FUND FOR ANIMALS; MAXWELL RICH, EXECUTIVE VICE PRESIDENT, NATIONAL RIFLE ASSOCIATION; STEVE SEATER, STAFF BIOLOGIST, DEFENDERS OF WILDLIFE; CYNTHIA WILSON, WASHINGTON REPRESENTATIVE, NATIONAL AUDUBON SOCIETY; HENRY TIFFANY, EXECUTIVE DIRECTOR, ALASKA NATIVE ARTS AND CRAFTS COOPERATIVE; ROBERT HUGHES, SIERRA CLUB NATIONAL WILDLIFE COMMITTEE; AND JAMES SHARP, ATTORNEY FOR FUR CONSERVATION INSTITUTE

Mr. FENSTERWALD. Mr. Chairman, I represent the Committee for Humane Legislation. Rather than summarizing my statement, the committee and I would be perfectly willing to have it printed in the record. The points that are made in it have been and will be made by other witnesses this morning.

So I think we can conserve time.

Senator TUNNEY. All right, Mr. Fensterwald, that would be fine. I would like—do you have a copy of your statement?

Mr. FENSTERWALD. Yes, sir.

Senator TUNNEY. Thank you.

Mr. FENSTERWALD. Mr. Chairman, I would like to thank you for holding these hearings. I think the remark you made, that delay can no longer be tolerated, is probably the key in this whole question.

The present legislation, which consists of two complex and rather confusing acts, is very ineffective. I think I can demonstrate this ineffectiveness by relating a problem in which I have been involved with respect to one animal, the polar bear. We have for years made efforts to get the polar bear put on the endangered species list. We went to court and failed to do so.

The reasons why we cannot do it are twofold: First, that under the present legislation an animal has to be presently endangered. There are in excess of 10,000 polar bears. Even though the locations of these animals are spread over the whole polar region, the Government's theory is that polar bears are not currently endangered simply because of the number that exist. Second, the polar bear is hunted primarily on international waters, on the ice floes. Therefore they are not taken in the United States or in a foreign country. Therefore the endangered species act, as now written, does not apply.

So, I think that just for technical reasons if for no other—and there are a number of others—this bill should be passed.

In addition, I think that an effort should be made to see that the legislation dovetails as closely as possible with requirements of the International Endangered Species Act which has been signed. I do not foresee any difficulties in that but I think that this is one of the things that we should be careful about.

The question that Senator Williams brought up—and that I would like to emphasize—is that in the case of animals about which there is some question as to whether they are endangered, where there is a lack of information, they should be put on the list until adequate information can be obtained. In other words, the benefit of the doubt

should go to putting them on the list, rather than leaving them off the list, until we gather the necessary information.

Lastly, I think that the Federal Government should retain the ultimate responsibility and authority for the implementation of this act. This point gets into the whole question of whether we are preempting the authority of the States. I do not think we should preempt the authority of the States if the States have stronger provisions than the Federal Government. But I think that ultimate responsibility and authority must be retained in Federal hands.

Those are the main points that I would like to make, Senator. Thank you.

Senator TUNNEY. Thank you very much. I have had the opportunity to read your statement and I think you make these points well.

Mr. FENSTERWALD. Thank you.

Senator TUNNEY. Mr. Regenstein.

Mr. REGENSTEIN. Thank you, Mr. Chairman.

My name is Lewis Regenstein, and I represent the Fund for Animals, a national conservation and animal protection organization.

I might add two of our most active offices are in Los Angeles and San Francisco. So, I want to commend the people of California for being so interested in this subject.

We very much appreciate the invitation to appear before this distinguished committee to express our views on the important legislation now being considered to amend and strengthen the Endangered Species Conservation Act of 1969. I want to thank you for holding these hearings and the opening statement you gave.

Mr. Chairman, we strongly endorse the general provisions and principles of the bills now being considered by this committee: S. 1592 introduced by Mr. Magnuson and Mr. Hatfield; and S. 1983 introduced by Mr. Williams. We feel that such legislation is urgently needed if we are to save for future generations what little remains of our wildlife heritage.

Because time is so short, I will quickly summarize my statement and mention only the major points.

The need for new legislation in this field is very obvious. During the past 150 years the rate of extermination of mammals has increased fifty-fivefold.

If these extinctions continue to increase at that rate, in about 30 years all of the remaining 4,062 species of mammals will be gone.

That statement was made by Dr. Lee Talbot, Senior Scientist at the President's Council on Environmental Quality.

I think it gives an alarming picture but a very accurate one of the state of our wildlife. The present Endangered Species Conservation Act is sadly inadequate to deal with today's crisis.

For example, the law contains no Federal penalty for killing or capturing a native-endangered species and allows the Secretary to list foreign animals only after they have approached the biological point of no return.

We are glad that the new legislation does not contain the phrase "worldwide distinction." That was a major factor in seriously weakening the present law. There are several protective provisions, most of which are contained in one or both of the bills now under consideration, which are essential if the new law is to be effective and meaningful in protecting threatened animals.

I will mention just a couple of these. First of all, the States must maintain a major role in managing and protecting their wildlife, and stricter State laws relating to the protection of wildlife should be allowed to prevail.

However, the ultimate, final authority for protecting threatened animals must rest with the Federal Government. The sad but unavoidable fact of this matter is that some of the States have simply not shown sufficient interest in protecting their wildlife.

Minnesota, for example, contains the last viable stock of Eastern timber wolves remaining anywhere in the United States, a population numbering perhaps as low as 400.

In any event, wolf hunters and trappers enjoy an open season year around in most areas of Minnesota; and wolves may be taken without limit, even though this species appears on the Interior Department's endangered list.

The Minnesota Department of Natural Resources, in response to this crisis, has formulated and attempted to implement a management plan for the timber wolf, which would establish a sanctuary for it, but would allow the annual "harvest" of 150-200 wolves each year, thus perpetuating and legitimizing the large-scale killing of these critically endangered animals.

In Louisiana, a similar situation prevails for the alligator.

Senator TUNNEY. Would you hold on?

I am going to have to go vote. I will be back, probably there 5 minutes and back in 5 minutes—a total of 10 minutes.

[Recess.]

Senator TUNNEY. I have gotten the word that there probably will be seven or eight votes today. I do not know how many will be this morning but at any rate there will probably be a number of votes so I would like to make sure that we get this hearing completed today because of the time factors.

It is just essential that we have a record—a new record that we can proceed with. So I will just ask you to—I know you are trying to expedite your statements but let us make sure we expedite them so that we can—so that we have about an hour and a half and we may have two votes so we will lose between 20 and 30 minutes.

Mr. REGENSTEIN. Three minutes or four?

Senator TUNNEY. Yes. If that is allright.

Mr. REGENSTEIN. Thank you. I will mention two other aspects of the bill.

A serious deficiency in both bills is the economic hardship exemption, which could allow the taking or importing of an endangered species for up to 1 year in cases of "undue economic hardship." In fact, during this 1-year period, the race to obtain an endangered species or its product could easily cause the species to be entirely wiped out or reduced to such numbers as to cause or make more probable its eventual extinction.

This loophole was partially tightened in H.R. 37, just marked up by the Subcommittee on Fish and Wildlife Conservation.

This provision should be further tightened and I will submit language which we recommend that would prevent such a provision from crippling the bills' excellent protective provisions.

Finally, the provisions allowing imports of endangered species for "scientific research" should be considerably tightened. The demand for animals by medical researchers is a major factor in the depletion of several species of primates.

To give you an example, at a recent State Department Conference on the International Treaty to Protect Threatened Animals, the spokesman for the medical researchers' lobby—the national Society for Medical Research, stated that if there were just two chimpanzees left in the world, he would not want to "close the door" on sacrificing them for research.

May I say, in closing, Mr. Chairman, we are aware of the June 30 deadline by which this legislation must be reported out of committee. We hope this deadline will be met for it will be tragic if this urgently-needed and widely-supported law is not enacted this year.

To sum up, our country has a special obligation in this regard, for, as the world's richest nation, we have been able to afford and even demand the luxuries that have so decimated the world's wildlife. Between 1968-1970, the U.S. fur industry imported 18,456 leopard skins, 31,105 jaguar pelts and an incredible 349,680 ocelot skins.

During this same period, 3,200 cheetah skins were imported, which represents one and a half times the number of cheetahs now estimated by the Interior Department to remain in all the parks of Africa.

In 1970, 2,397 extremely rare primates, representing eight critically-endangered species, were also imported, including 150 golden-lion marmosets, a total about equal to the present estimated wild population.

Because of our past record, it is incumbent upon us to take the lead in adopting strong, effective laws which will bring an end to the slaughter, suffering and eventual extinction man is visiting upon so many of his fellow creatures.

That concludes my testimony, Mr. Chairman. Afterwards, I would be most happy to answer any questions you might have and again, thank you very much for the opportunity to appear here today.

SENATOR TUNNEY. Thank you very much. I have had an opportunity to read it all. It is a good statement.

Mr. Rich.

MR. RICH. Mr. Chairman, I am Maxwell E. Rich, executive vice president of the National Rifle Association.

I have filed a statement.

We are delighted with the opportunity to be here and certainly with our members, we are vitally interested in this and applaud the leadership position that this Nation has taken.

I would like to briefly mention on a couple of things with reference to the bill. The provisions calling for international agreements to protect endangered species are especially commendable and noteworthy.

One point we would like to make is that the bill provides the Secretary of the Interior with the power to issue import licenses for scientific purposes and for certain economic hardships.

But the Secretary does not have the authority to grant an import license to the individual who, in full compliance with laws of other countries takes an animal listed as "endangered" over parts of its range. And in cases where such an animal is taken in full compliance

with a sovereign nation and in the view of the Secretary the taking of that animal does not endanger survival of the species, the Secretary should be authorized to grant an import license for solely noncommercial purposes and we recommend language be incorporated in the bill to take care of this.

Section 2(C) of S. 1592 gives the Secretary, after consulting with affected States or countries, the sole discretion in declaring a species endangered.

We believe this provision a preemption of the powers of the several States and not in the public interest or in the interest of species so listed. In the interest of marshaling all forces available to develop all possible support at all levels for endangered species of wildlife, the Secretary's authority should be tempered by the concurrence of the affected States, unless the Secretary shows that a failure of concurrence on the part of State authority is based on unsound and unscientific factors.

Finally, the Secretary is granted broad authority to acquire land and water to carry out the provisions of the act. We feel this portion of the act should be strengthened to include authority for the Secretary to participate in cooperative programs of conserving, protecting, restoring endangered species on other public and private lands. We recommend that such language be incorporated in S. 1592.

I am grateful for the opportunity to express the views of the National Rifle Association of America to the committee at this time. We are in full accord with the purpose of the act and our only interest is to add our comments as a constructive means of strengthening and improving national concern for endangered species of wildlife.

Thank you very much.

Senator TUNNEY. Thank you, Mr. Rich.

Mr. Seater.

Mr. SEATER. Thank you, Mr. Chairman. I am Steve Seater, staff biologist, Defenders of Wildlife.

I am most thankful for this opportunity to testify today. The Defenders of Wildlife urges the Congress to enact endangered species legislation which contains the following general provisions:

(1) The purpose of the act ought to be the restoration of endangered species of fauna and flora as well as the preservation of the biotope in which they live.

(2) The definition of "take" should be worded so as to prohibit any modification or perturbation of biotopes. Moreover, the Secretary should be empowered to prohibit "taking."

(3) It is important that a definition of wildlife be included which goes beyond species and subspecies and encompasses any race or variety whether geographical or ecological in nature. This would have the effect of protecting isolated and unusual populations regardless of their taxonomic status and would forever do away with the arrant concept of worldwide extinction which has acted as a stumbling block to the listing of so many threatened species.

(4) The definition of "endangered" should be predicated on a species' diminished role within the ecosystem. That is, a species should be considered as becoming threatened with extinction when its ecological vitality is impaired due to such factors as loss of habitat, over-exploitation, pollution, or as a result of competition from introduced species. The term "endangered" should also encompass "rare."

(5) Jurisdiction over all endangered fauna and flora should reside with the Federal Government. The regulatory power over the taking of endangered species should be vested in the Secretary of the Interior in the case of animals, and in the Secretary of Agriculture in the case of plants. However, the management of endangered species could probably best be carried out by the States. Federal funds ought to be made available to the States for management and law enforcement activities on a cooperative basis.

(6) The Secretaries of Interior and Agriculture should be compelled to publish their reasons for any actions they may take. This would have the salutary effect of increasing public awareness and involvement.

By far the best endangered species legislation to be introduced in this session of Congress is S. 1983. It contains most of the provisions outlined above. A detailed analysis of S. 1983 will be submitted by Defenders of Wildlife within the next few days.

In closing, Mr. Chairman, I would like to reemphasize the need to preserve biotopes as well as individual animals and plants. The final legislation should provide for strong punitive action against all those who disturb, degrade, or otherwise alter biotopes in which endangered species reside.

Thank you.

Senator TUNNEY. Thank you very much, Mr. Seater.

I just point out that we are working under a real time constraint. When you say the next few days, you realize that the markup of this legislation will be—when?

Mr. CUNNINGHAM. Probably Wednesday.

Senator TUNNEY. Wednesday next.

It would be helpful then if you could have those comments in.

Mr. SEATER. I could have my comments in before that.

Senator TUNNEY. Maybe before the weekend?

Mr. SEATER. Fine.

[The following information was subsequently received for the record:]

DEFENDERS OF WILDLIFE,
Washington, D.C., June 22, 1973.

Senator JOHN V. TUNNEY,
Senate Commerce Committee.

DEAR SENATOR TUNNEY: Defenders of Wildlife considers S. 1983, introduced by Senator Harrison Williams of New Jersey, to be the best of the endangered species bills introduced this session of Congress. We would, however, like to suggest the following changes in wording to bring S. 1983 more closely in line with the Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereafter referred to as the Convention, and to strengthen a few areas in which we have detected weaknesses:

(1) Under Sec. 2(a). It would be highly desirable if a statement of purpose could be incorporated similar to that found in the Convention. The following language is suggested:

"The Congress finds and declares that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural system of the earth which must be protected for this and generations to come; that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife and flora; that serious losses in other species of wild animals and plants of ever growing value from an aesthetic, scientific, cultural, recreational and economic point of view have occurred and are occurring."

Also under Sec. 2(a) following the International Convention for the High Seas Fisheries, the Convention on International Trade in Endangered Species of Wild Fauna and Flora should be inserted.

The last sentence of this section should emphasize the conservation and restoration of habitats as well as fauna and flora. The following language is suggested: "The purposes of this Act are to provide a program for the conservation, protection, restoration, or propagation of species and subspecies of fish and wildlife and flora as well as their habitats that are threatened with extinction."

(2) Under Sec. 3(b) we strongly recommend that language be included which would prohibit the modification or curtailment of an endangered plant's habitat. The following language is suggested: "— with respect to flora, to collect, sever, remove, or otherwise damage in any manner; or the destruction, modification or curtailment of its habitat."

Sec. 3 should also include a definition of wildlife which goes beyond the species and subspecies concept and encompasses any race or variety whether geographical or ecological in nature. The following language is suggested:

"Species means any species, subspecies, race, or geographically isolated population thereof."

Defenders of Wildlife believe that a definition of endangered should be included in Sec. 3. The best definition we have seen is that formulated by the National Parks and Conservation Association which conforms with that found in the Convention and reads as follows:

"'Endangered' shall denote the status of any species (as defined in (2) above) the ecological vitality of which is becoming threatened due to any one or combination of the following factors: commercial exploitation; loss of habitat; hunting; pollution; other adverse environmental influences. Endangered shall include 'rare'. Among the criteria to be considered in determining the status of a species are the following: significant population decline; significant decrease in recruitment; significant modification of age distribution within the subject species. All species covered by this legislation shall conform to this definition."

(3) Sec. 8(a) should be reworded as follows:

"The Secretary may permit the importation, taking, or transportation in interstate commerce of any species or subspecies of fish or wildlife or flora only when it can be demonstrated that it will be of benefit to the species, or in emergencies involving human health and safety."

Sec. 8(b). It is important that the period in which economic hardship permits are granted be shortened from one year to 90 days. This would bring S. 1983 into conformity with the Convention which, while it does not have an economic hardship clause *per se*, does allow for the taking of endangered species for a period of 90 days after ratification.

We must do our utmost to insure the survival of species at the periphery of existence by keeping the economic hardship period as short as possible—this was the intent of the 80 international delegates who participated in the conference which drafted the Convention.

(4) S. 1983 would be greatly improved by compelling the Secretary to publish his reasons for any actions he may take.

(5) Because the Department of Agriculture lacks sufficient scientific expertise in the area of systematic botany and plant geography, we suggest that the scientific authority for endangered flora be vested in the Secretary of the Smithsonian Institution. The following language is suggested:

The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of plants which may become endangered or threatened and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review.

In closing, Defenders of Wildlife wishes to emphasize the need for a section authorizing the appropriation of funds to implement this legislation.

I hope these suggestions and changes in language will be helpful to you and the Committee in drafting a clean bill.

Sincerely,

STEPHEN R. SEATER, *Staff Biologist.*

Senator TUNNEY. Ms. Cynthia Wilson.

Ms. WILSON. I am Cynthia Wilson, National Audubon Society, Washington, D.C.

I will be happy to submit my statement for the record since time is so short.

Senator TUNNEY. Fine.

Ms. WILSON. I will say that the Audubon Society endorses the bill, S. 1592. I have not had a chance to study the Williams bill in detail so I cannot comment on that; although it appears to have many good features.

We would urge the committee to consider our technical comments which we have made on the bill and I will not take your time now to go through them.

Some of them have been covered and others are nitpicking things that are technical. They are more appropriate to be looked at by the staff.

We urge the committee to try to get this bill through, because we think it is essential to get through this year before another year slips by.

Senator TUNNEY. Well, I agree. I will have some questions of you later.

Does that complete your statement?

Ms. WILSON. Thank you.

Senator TUNNEY. Thank you, Ms. Wilson.

Mr. Tiffany.

Mr. TIFFANY. I do not have a prepared statement.

Alaska finds it difficult to make these meetings. I am here representing the Alaska Native Arts & Crafts Cooperative.

I am their general manager. It is a nonprofit private cooperative representing over 100 villages across the State of Alaska.

I was instructed by my board and board chairman, Amos Lane, from Point Hope, Alaska, to represent the cooperative at any point where legislation might endanger the survival of the Eskimos, Indians, and Aleutians that I work for.

The present legislation before you would seem to be appropriate in many ways as regards worldwide taking and particularly the non-Native of Alaska.

The Eskimos and Aleuts and Indians that I work for representing approximately 30,000 people around the coast, 33,000-mile coastline of Alaska, are highly dependent in a way that most people on the east coast and particularly some conservationists circles are unaware of.

I have had a brief chance to look at Senator Williams' statement this morning, and he refers to the critical balance of the economic system.

The Eskimos are very much a part of the critical balance and the economic system. I think they would like to survive.

At least they have indicated that to me. The situation is not one where just money can compensate. So, I would like to just briefly state that although—because of our wealth and because of our technological advances, harvesting of the sea is no longer critical to some peoples.

I would suggest that this bill make an exception for the Alaska Native so he might continue to live as he did long before we ever walked his land.

The whale, the walrus, and various other species that have been discussed, specifically the bowhead whale which I understand is presently being considered for the list, is a critical food to certain communities.

It enters into it from a dietary standpoint which is very important. It is an oily food, taken on a seasonal basis, generally in the spring, early May or late April; the take is somewhere between 10 and 40. This year when I left Alaksa—the St. Lawrence Islands—there had been 11 whales taken. This dietary aspect apparently has physiological value with the scientific field that the oil is derived from this harvesting is critical to the Eskimo's balanced diet.

The Eskimos have told me and have testified at other hearings, at the marine mammal hearings, that when they move into an urban community and are cut off from these foods, they will begin to have certain skin problems and the only way they compensate is having the stuff moved around by the airplanes to get food into them.

I would say this exemption also is required for the sociological structure of the community to be held together. Hunting is a critical part of their whole life, and it has to do with the social status of the community, the leadership, and the whole fiber as it relates.

The whale is very important also to their relationship with other communities. When a whale is taken in Zumungo and there is not one in another area, they are split very carefully. There is a whole community responsibility to survive here.

The exemption I feel would not—from what I can understand from the testimony by Alaska biologist and others—would not critically endanger the overall survival of the species if the law is allowed to pass so that others on the high seas do not enter into taking of these whales or other species that may come up.

The Eskimo is critically aware of his relationship to nature and is very conscientious in leaving behind—if there is taking of eggs from a particular bird, there is always enough left behind so they will come back another year.

This is part of their mythical and part of their actual world that they should respect the nature that feeds them.

It is a very close relationship, and it cannot be supplanted by food stamps and other grants and welfare. It does not allow these people to survive in a manner that they can be proud of themselves.

I do not feel it is necessary in the interest of these animals, sea mammals surviving, to sacrifice the coastal Eskimos of Alaska.

Thank you. I will be glad to answer any questions.

Senator TUNNEY. Thank you.

Mr. SHARP. Thank you, Senator Tunney.

I am James R. Sharp, an attorney with offices in Washington, D.C. I appear as Washington counsel for the American Fur Merchants Association and the Fur Conservation Institute of America, both headquartered in New York City.

The Fur Merchants Association is made up of the major fur dealers in the United States. The Fur Conservation Institute is a broadly based organization whose members include organizations in almost all phases of the fur industry in the country. The fur industry again takes this opportunity to applaud the efforts of the Congress to provide protection to endangered species and world leadership in your highly meritorious conservation effort.

The fur industry is one of the oldest in the country. There are those who back the conservation movement who would purposefully destroy the fur industry.

I refer to those who simply do not believe that a fur-bearing animal whether wild or ranch raised, should be killed when the purpose is for the use of the pelt for clothing. We disagree with this thinking but firmly back honest conservation efforts designed to prevent extermination of species and subspecies of wildlife.

The very existence of the fur industry depends upon the preservation of sufficient quantities of wildlife to assure annual breeding of quantities which can be taken to supply the trade without in any way threatening the extinction of species by the demands of the industry.

It is for this reason that the industry has formed and is solidly behind the Fur Conservation Institute of America which is one of the two organizations I represent.

That organization and the American Fur Merchants Association both support S. 1592, the Endangered Species Conservation Act of 1973.

However, as in the case of the act adopted in 1969, we find that in their enthusiasm for conservation, the draftsmen of that bill and the others now being considered—some of the others being considered by this committee including S. 1983 introduced June 1 by Senator Williams, S. 1637 introduced by Appleby, have included provisions which would unnecessarily harm the industry I represent.

We think that the legitimate purposes of these legislative proposals can be accomplished without killing off the fur industry. If the disclosed or undisclosed purposes of these bills before the committee include the demise of the fur industry, that industry must of course fight for its life.

If, on the other hand, such devious purposes are not included under the cover of conservation, we wish only to point out to you that the desired conservation efforts can be accomplished without cutting off or crippling the fur industry.

Within whatever reasonable period—and I understand, Senator, that the period is Friday, or the day after tomorrow—

Senator TUNNEY. We would like to have your comments by Friday because the bill will be marked up on Wednesday; the anticipation is that a clean bill will be before the committee on Wednesday bringing together some of the salient points that are contained in S. 1592, S. 1983 and comments that are being made here today.

Anything that follows on in the next few days, of course, too. So, the quicker we have those specific comments, the better off your position will be in receiving the kind of hearing that you would like to have it receive.

Mr. SHARP. I understand that and appreciate it.

I was one of the unfortunate ones who, until yesterday morning, did not even know that this was about to come to a head. So I am not apologizing for it but it does happen that my letter did not arrive in the mail or something.

Senator TUNNEY. I am sorry for that.

Mr. SHARP. In any event, I will finish this statement in just a moment.

We will try to point out four or five major problems which we feel could be avoided by proper draftsmanship which would, in our opinion, do serious injury to the fur industry unnecessarily.

Again we have two philosophies about this legislation as you well know; one, to stop all killing. Use of pelts for garments is supposedly out by those who believe that ranch raised or otherwise, animals should not be killed for that purpose.

There is the other philosophy that pelts have been historically used for clothing and that such use can and should be continued without that use being amoral.

Obviously the fur industry which is a very large one subscribes only to the second.

We trust anyhow that the members of the committee will consider our comments and those submitted by others, and come up with a sound measure designed to conceive measures to conserve species threatened with extinction.

We trust that in so doing, you will shun efforts of those over-enthusiastic conservationists who would simply take the easy route, the unscientific route and therefore the dangerous route, the conservation by adoption of measures which would destroy the fur industry for all time.

Thank you, sir.

Senator TUNNEY. Thank you, Mr. Sharp.

Mr. Hughes.

I am Robert Hughes, chairman of the Sierra Club National Wildlife Committee.

We are an environmental organization of over 140,000 members internationally with headquarters in San Francisco.

I would like to make a few brief comments on Senator Williams, bill.

Specifically as to IV(a)(2) which provides for the placement on the list for animals whose status is unknown.

This prevention is excellent and will help prevent the exploitation of a species while its status is being determined.

Section 3(6)(b) does not provide under the term "take," the destruction of habitat, range modification or curtailment of habitat for flora as it does for wildlife and fish.

I think that that should be included under the flora section, also.

Section 6(e) provides for hardship taking but it does not provide for hearings on such hardship permits.

The Marine Mammal Act does so provide and I think that provision for hearings should be incorporated into this legislation.

The Marine Mammal Act has worked very well in that respect.

Section 9(g)(1) provides for the registration of dealers in wildlife. This is another item of vital importance if there is to be regulation and protection of endangered species.

It is, of course, very important that the ultimate authority and ultimate control for the protection of endangered or threatened wildlife resides with the Federal Government.

Cooperation with the States is important, but final authority must be here in Washington.

That is all that I have to say at this point.

Senator TUNNEY. Fine.

Thank you.

I have about eight or nine areas that I want to cover in the next hour.

I know we are under real time binds, so anyone who wants to reply, I hope will reply but if you could limit your statement to a couple of minutes so that we can cover as many of these areas as possible, it would be appreciated and the more areas we cover, the better it will be. If we do not cover them, we will probably legislate in the area in which—well, the more comment we have on the various areas, the better off we all are.

The first is the question of State powers. The issue as I see it is whether or not we ought to have preemption of the powers of the States or whether or not we should permit preemption only if the States are not doing an adequate job.

Is there any comment anyone would like to make on that?

Mr. HUGHES. We do believe final authority should be Federal. On environmental matters, the idea of States rights or local rights does not work too well—these areas are very broad physically.

Wildlife crosses State lines, there are very few species confined to a single State and we find that with 50 States, there are 50 entirely different philosophies, most States do not even have programs for this kind of thing nor money for it.

We would be very distressed to see the Federal Government abandon this role of leadership and authority.

Senator TUNNEY. What about a situation where the State has a tougher law?

Mr. HUGHES. That is another provision in S. 1983 which is fine.

We would hate to see anything happen that would negate laws like the Mason Act.

Senator TUNNEY. How many enforcement offices does the Federal Government have at this time?

Mr. HUGHES. I do not know.

Ms. WILSON. How many officers?

They only have some 200 enforcement agents for the entire country. 257, I think for the entire country.

As a good example now—and this may be the case—the court of New Orleans did not even have a full-time enforcement person to take care of endangered species.

They are dreadfully undermanned. They are in their budget requesting a significant increase for enforcement people but they are very undermanned as far as that part, the importation they are really undermanned.

Senator TUNNEY. So what is your opinion, Miss Wilson, as to the preemption issue?

Ms. WILSON. We support the Federal Government having final authority.

Obviously that has to be done cooperatively with the States.

It would be very unfortunate if there became a void in responsibility as has happened to some degree with the marine mammals act where all of a sudden, if the Federal Government preempts, then the States feel understandably so now you have preempted, now you do it.

So there has been a void. I would hope it would be possible we could work out language that would prevent that from happening so you do not have this vacuum of the Federal Government preempting but them not working with the States.

I think it has to be a cooperative effort.

Senator TUNNEY. So the Federal Government should only preempt if the States are not doing an adequate job?

Ms. WILSON. I think the problem is almost a question of bureaucratic policy and procedure.

If you have a setup where you say you preempt, if they are not doing a good job, then as a practical matter, how do you then in effect say to the States, all right, you have been running this for a year and we do not like the way you do it, now we will take it away from you?

That kind of thing could lag on and on and on so that could be a problem.

Meanwhile, whatever the species being fought over could be declining.

I think, to us it would be preferable to initially have the Government have final authority over taking and on a finding that the State is doing an adequate job, fine, the State should manage it and we think the Government should provide financial assistance to help the States.

It is not fair to put the responsibility on them because most State wildlife budgets have little or no money for nongame species so we have to help the States. We cannot expect them to take on added chores and not be helped.

You might be interested in the Endangered Species Act like New York's which is more restrictive than the Federal.

It includes for instance species that are not on the Federal list, and we are hopeful that stiffer laws like that could stand. And will be left to stand—if the State wishes to be stricter they can.

Senator TUNNEY. Mr. Tiffany.

Did you have your hand up?

Mr. TIFFANY. I would like to say the subcontinent of Alaska has established a fairly sound State program and the State with only 300,000 people in it, probably has a higher relationship to sea and land harvest on per capita basis than any other State and a more personal involvement. It is very responsive to change and the community feels involved and I would think that your second option would be most appropriate where the State, if it can demonstrate as I think Alaska can, its performance and its awareness and the ability to back up proper leadership, that the Federal Government would restrain.

Senator TUNNEY. Assuming we put a provision—I am not saying we are going to—but there was in the first instance Federal pre-emption unless it looked as though the States were doing an adequate job.

Do you think there ought to be some kind of a time table for that decision to be made?

Mr. TIFFANY. Quite possibly. It would seem as though if some States have not bothered to have anything yet, that a time table might be appropriate.

I respect that game travels do not recognize the State boundaries and you could have disasters happening, but in the game world, it seems to be a fairly well-informed interactive group. They all are aware of the take, they may not be able to respond to it because of lack of legislation but they are not unknowledgeable.

I would think a time schedule would be reasonable.

Senator TUNNEY. Yes, sir.

Mr. Kaufmann.

Mr. KAUFMANN. Senator Tunney, I think the very fact that we are debating Federal approaches to legislation answers part of your question.

There is a great need for intervention by the Government. Some States have been doing a fine job, while some States have been doing a poor one. Your question concerns the whole spectrum in between.

We feel it is essential that the Federal Government be empowered to exercise basic authority in the area of threatened and endangered species with provisions in the bill for delegation to the States of the administration of programs and to enforcement of laws.

Senator TUNNEY. Would you favor a time table for the decision to be made by the Federal Government as to whether or not the State was doing an adequate job?

Mr. KAUFMANN. Yes, sir. I would align myself with Ms. Wilson's comments in entirety.

We have been following the evolution of the enforcement of the Marine Mammal Protection Act very, carefully. Unfortunately, the way the act was written, there was a hiatus between the time the act became law and the time at which it was possible for the Federal Government to work out agreements with the States. This problem has not yet been completely resolved.

Therefore, we would recommend that care be taken to provide that State laws, where they are the equivalent of or more protective than the Federal laws, certainly be maintained until such time as the Federal law is incorporated and implemented.

This gap has presented a great problem with the marine mammal protection.

Senator TUNNEY. Mr. Rich.

Mr. RICH. I just wanted to make a point on the cooperative effort and certainly not slam the door as far as the States are concerned.

I agree that somewhere in the final analysis we have to have a final authority but you have to have safeguards for the States in doing the job that most of them are doing now and come up to standard and then again, if a failure is shown, then I think it is time to act.

Senator TUNNEY. What criterion should be included in the act for the approval by the Secretary of State management plans?

Does anyone have a comment on that?

Mr. SHARP. I did not quite get the question.

Senator TUNNEY. What criterion should be included in the act for the approval by the Secretary of State management plans?

Mr. HUGHES. In New Jersey, we are currently considering a bill for nongame wildlife which appropriates \$100,000 for the whole thing.

What it all comes down to is the fact there is not a fish and game biologist in the State acting as a biologist trained in anything except games management.

This is true in most States. One of the criteria is going to have to be a broader based educational background for the personnel who would do this type of work because you do not manage all wildlife for exploitation. This is essentially the orientation of the fish and game departments.

There are some departments like California and New York which are moving away from that and getting some good men with broader backgrounds.

This is a very important key to the whole problem of giving any control to the States. They have been trained and indoctrinated in game management which in some cases is not bad, which in some cases is not good.

Senator TUNNEY. Yes.

Ms. Wilson.

Ms. WILSON. It occurs to me, habitat is really so very important to wildlife and no matter what else you do, if you let the habitat go to pot, you might as well give up.

I have not formulated this in detail at all but I certainly think that consideration of the State's efforts to preserve habitats should be in the State's management plan.

Mr. TIFFANY. Senator?

Senator TUNNEY. Mr. Tiffany.

Mr. TIFFANY. I would like to adjust one thought, that might be that part of the criterion be a regional point of view on the secretary's part rather than worldwide.

The harvesting people I work for are harvesting such as they do in Iowa, Kansas, and conditions vary. There may be a local population that is not tied in exactly to the survival of a population somewhere else.

I think, if those regional aspects could be respected or at least considered, it would be important.

Senator TUNNEY. Yes.

Mr. SEATER. I think the idea of defining endangered—well, actually the definition of species is what we really want to talk about here.

If we can include population segments and so that a given population, one particular segment may be endangered, another may not be.

It makes it a lot easier to manage the segment endangered and still allow taking or whatever in the unendangered segment of the population.

I think I had it in my testimony. The definition of species.

I think the definition should be beyond species and encompass any race or variety if geographical or if geologic in nature.

I think that would help a lot to facilitate management.

Senator TUNNEY. Yes.

Mr. KAUFMANN. We endorse the concept of "population segment"; that should be part of the definition, but we would add an additional concept to it—that before the Secretary would authorize taking of individual animals of endangered species in a particular area, full consideration be given to the possibility of surface animals being moved to the areas where the population is endangered before any harvest can be permitted of the unendangered sector of the population.

Senator TUNNEY. To turn to another subject, the Marine Mammal Protection Act provided exemptions from the act moratorium on taking and permitted Aleuts and Eskimos taking for subsistence purposes and for creating and selling native articles and handicrafts and clothing.

Such a provision is not included in the bills before us regarding endangered species.

Mr. Tiffany, have you any problems with the administration by NOAA of this provision of MMPA?

I am interested in any suggestions you might have for tightening of the exemption to avoid abuse while still fulfilling its purposes.

Mr. TIFFANY. Well, there has been—as has been pointed out—a time lag in the implementation of these bills and I do not know if the regulations have come out yet but without them there was a certain void.

If somehow that void could be closed, the actual working of the bill would benefit.

For example, in the marine mammal bill, the sea otter sort of escaped the game.

Technically, if you read the law in a particular way, you could see where you could start the harvesting of sea otter which was still a protected species.

But the State and Federal people in Alaska representing wildlife just said, do not try it, we will get you some other way.

Just because there was a mistake, do not fool around. The attitude seems to be that we will work together to preserve harvesting or harvestable crops.

These are farmers so that the killing/nonkilling issue is not even considered by them. But NOAA to date has not really been on the scene except very lightly.

Senator TUNNEY. Does anyone else have any comments about the Alaska Native exemption?

Mr. REGENSTEIN. No one objects to Native subsistence hunting of nonendangered species because this is their livelihood. But I think we would be making a mistake if we took away from the Secretary the authority to prohibit the taking of critically endangered species and animals which would be subject to category 1, presently endangered. When a species is extinct, it is gone forever. For the Natives and for everyone.

I think it is possible that Native killing of bowhead whales for example, could in the longrun seriously affect this species.

I think it would be in the longrun interests of Alaska Natives to protect these whales if the Secretary feels this bowhead population is so seriously jeopardized, it has to be placed in category 1, then that is it. If it is not so endangered, not critically endangered, it would be in the second category of the act and it would be subject to Native taking.

I think we are opening up a Pandora's box if we allow a blanket exemption.

Senator TUNNEY. Mr. Kaufmann.

Mr. KAUFMANN. My recollection of the act is that the Secretary indicates endangered species and can limit Native taking of endangered species. To the extent we pick up the words, let us be sure that that point stays in the act.

Mr. HUGHES. If we are going to provide for Native exemptions, it is important that the provision in the Marine Mammal Act to allow the Secretary to restrict the taking be inserted into this legislation.

Mr. TIFFANY. The exemption in the Marine Act allows the people I work for to continue it while he decides what to do as that exemption is explained and I think that is a more appropriate way than just axing the whole economy that these people are surviving on.

I think that so far this year there were about 11 whales taken and I do not believe they have lost but one or two under the ice, which is unusually good.

I cannot believe that from what they viewed, when you talk to people on these islands and they explain the herds they have seen go by of the bowhead whale, it makes me wonder if the 400 figure that has been used is the limit of the population and is really too modest.

From what they tell me from their own personal experience out on the waters that there are considerably more than that. Of course they do not grasp the world population.

Senator TUNNEY. Yes.

Ms. WILSON. Maybe we can ask Mr. Tiffany a question. It might enlighten us all.

What percentage or portion of the Natives' life or livelihood is dependent on the bowhead whale? I presume they hunt or fish.

Mr. TIFFANY. Yes.

Ms. WILSON. How much of a factor is it in their economy and life?

It is 10 percent or is it larger? Do they entirely subsist on the bowhead whale or what? If you could tell us that would be useful to know.

I just do not know and I wonder if you could tell us.

Mr. TIFFANY. Each village has its own economy system balances as Senator Williams would say and the bowhead whale specifically concerns about seven villages ranging from Wayneright, Point Hope and down through St. Lawrence Islands.

Now, for those villages, it represents a spring harvest prior to the walrus and after the fishing through the ice has stopped and although it is only one aspect, it is sort of their whole balance.

For example, the oil is used extensively, the blubber is an important ingredient, they store it and it can last throughout the year.

The bone and all is used not only for making—mostly to use for certain arts and crafts which I am charged with marketing, and this provides the cash crop for them to buy Scadoos, part of their winter hunting, and outboard rigs, part of their summer equipment, and oar equipment, rifles and cartridges which are for fish-taking of game.

As you move down the coastline, you have different aspects of wildlife, different aspects of the ocean and the land that enter into it. But the bowhead is principally these seven villages on the northwest coast.

Mr. SEATER. Senator, I think we also have to take into consideration that the Eskimos hunt whales and other marine mammals as an integral part of their culture and they have to maintain their cultural integrity. We have been talking about endangered species but we also have endangered cultures and I would like to see some of these cultures preserved.

I am not sure that the bowhead would be placed on the first appendix anyway. I have talked with Scott McVey, who has done a tremendous amount of work on bowhead whales and while I do not want to speak for Scott I do not believe Scott is opposed to Eskimos taking bowheads.

I believe he feels that the methods should be improved.

I mean the methods for taking should be improved.

I think we have to be very careful in limiting the Native taking in Alaska. Unless the species is really critically endangered and right at the brink, I am not sure that we should take this privilege away from them.

Senator TUNNEY. Mr. Regenstein.

Mr. REGENSTEIN. I think we are all more in agreement than we seem. I do not think anyone could advocate continued taking of an animal that is critically endangered.

If the bowhead is recovering, maybe it could continue. But if this animal is critically endangered, I cannot believe anybody would want to take away from the Secretary the authority to stop the killing and allow them to recover.

I think it is possible the animal is literally being wiped out by Native hunting, and if that is so, we would like to see the Secretary have the authority to stop the killing of them.

In the final law, I think we can all agree it should contain that stopgap provision.

Mr. SEATER. I think so, and I also think the purpose of the act ought to be restoration of the species. We are talking about an endangered species and taking the right of hunting away from the Natives. Eventually, it is hoped the species will be restored so Native hunting could continue or resume.

Senator TUNNEY. Yes.

Mr. KAUFMAN. I was not here for the previous day's testimony, and if I might ask a question rather than answer one: Was the question of the Marine Mammal Act's protection of this Endangered Species Act discussed?

Senator TUNNEY. Yes.

Mr. KAUFMANN. Was there clarification resulting from that discussion?

Senator TUNNEY. Not to the clarification. That is why I am asking the questions.

Mr. KAUFMANN. We would certainly hope that, to the extent that the Marine Mammal Act is more protective than the Endangered Species Act, the Marine Mammal Protection Act would prevail, and vice versa. To the extent that the marine mammal becomes an endangered species, we would want the stronger provision of Endangered Species Act to prevail.

We hope that appropriate wording could be built into the Act to reflect this.

Senator TUNNEY. To move to another subject, that is hardship exemptions.

Mr. Sharp, the economic hardship provisions of the bill before us would permit the taking of listed species for 1 year after listing it.

The applicant had earlier contracted in good faith to take such animals.

These provisions have been criticized in relation to the Marine Mammal Protection Act. Could you explain why these provisions are necessary and how they work?

Mr. SHARP. Well, take—as an example.

Back in 1968-69, when the Endangered Species Act was under consideration in the Congress, it was perfectly legitimate prior to the U.S. laws to import and deal in numerous spotted cats which later were put on the endangered species list and perhaps many of them on the first endangered species list issued by the Secretary. Well, I do not know the exact quantities, but I am sure there were dealers who had contracted and laid out substantial letters of credit or cash for the purchase of species which later were put on the list; second, I, myself, in those days saw inventory in New York City of substantial numbers of skins, perfectly legitimately bought which were later, however, placed on the endangered species list when it was issued in June 1970, I believe it was.

But in any event, we pleaded with the Congress, the two committees at that time, that while the purposes of the act were very legitimate, we backed them, while we urged they be adopted, that in the process no businessman who had conducted a legitimate business should have his throat cut financially and be ruined when it would do no good at all.

Those animals, those in inventory, were dead. There was no reason why the guy who owned them or the company that owned them should be ruined financially simply because there was a ban on further importation of that particular species.

Now that, I think, takes care of the inventory. I do not think it is our habit as good Americans to adopt laws which will literally—because we have a new concept of morality or whatever it be—which will bankrupt the guy who simply did what he was entitled to do prior to the adoption of that law.

The only other area in which this licensing authority was given was that there were, he found by inquiry in the trade, certain contracts outstanding for delivery of x number per month against which letters of credit had been—irrevocable letters of credit had been granted. There again, if there was no permission given to the Secretary of Interior to license the importation for a limited period of time of animals or skins which were probably already captured, already taken—not all; I cannot guarantee that, but they probably were—and they felt that 1-year period was sufficient because the inquiries also showed there were substantial inventories abroad in the hands of those who took the animal legitimately and sold them legitimately under a long-term contract to, say, a New York dealer.

That was all we attempted to get there. I think it was perfectly legitimate, Senator. I have no knowledge personally of any trouble that was caused by it. I have never read of any substantial taking or threatening of the existence of any species that was brought about by reason of that licensing permission given to the Secretary to—after investigation, grant a license to ship in interstate commerce what was on hand in the United States and continue to import what was under contract where he could not cancel without financial injury.

Senator TUNNEY. Of course, contracts are voidable if the Government laws or regulations prevent completion.

In the case of live animals, should we grant only losses suffered as a result of such voiding?

Mr. SHARP. I do not understand, Senator.

Senator TUNNEY. Well, you know, we have an indemnity provision that where contracts are voided as a result of Government action, Government laws, that the Government would make restitution.

Now, should we grant only losses suffered as a result of such voiding, or should we grant losses in prospective areas in, say, letters of credit to provide for certain numbers of skins per month or for certain periods of time?

Should we grant only existing losses, or should we grant also, in your opinion, losses of prospective or that are prospective in nature?

Mr. SHARP. I think you should permit the administrator of the act after due investigation—and when he is satisfied that a hardship would occur—to provide relief in any case where there is a hardship which would occur.

I am not familiar with the provisions you are speaking of which would permit—and I do not think there is such a thing as automatic indemnification and compensation for the violation of a contract by the Congress. Of course, there is a constitutional provision preventing States from adopting any contract which would abrogate an existing contract. But insofar as I know, the Congress can do so and has done so on many occasions but I do not think there is automatic right to reimbursement.

That is why I urge that the administrator be given the right when he sees a hardship, to grant relief from that hardship.

Senator TUNNEY. The bill provides that there would be an opportunity to complete the contract and what I am wondering is, if we ought to change the language just to grant an indemnity, and not complete the contract?

Mr. SHARP. I would say that the industry which I represent would not have any objections so long as somebody does not take a licking unnecessarily simply because of an additional provision in the law which made illegal what was legitimate up until the time of the new statute.

Our purpose was not to assure that we got the skins but there were those who had contracted to buy and in turn, contracted to sell.

If we do not take a licking on that, there is nobody getting kicked around. If it will help preserve the species and cut down on taking of an animal which is likely to become extinct, I am sure there would not be the slightest objection, not legitimately, sir.

Senator TUNNEY. Yes.

Ms. WILSON. I am sorry but I do not have a great deal of sympathy for hardship exemptions.

If I remember correctly—counsel, do you have a copy of the 1969 act?

Mr. CUNNINGHAM. No; I do not.

Ms. WILSON. But my recollection is that in fact when that act was passed, it was sometime before the Endangered Species Act went into effect, is that right—the listing of the species.

Mr. SHARP. Six months from December 5.

Ms. WILSON. There was a 6-months' period between passage of the act and the time it became illegal.

Mr. SHARP. There had to be a time to issue the list after the studies required by the Congress.

Ms. WILSON. Right.

Also that act had been in the previous Congress and not gotten through. The point I make is that in a general way, it is no big secret what species are likely to be considered for inclusion on these lists.

Obviously, there might be some that would escape attention I know. But of the commercial species, certainly I think the industry is on notice by the fact that the legislation is going through the mill that this is likely to happen. These species are likely—an act is likely to be passed sooner or later and that these species are likely to be included on it by the well-known fact that their numbers are low and the industry is in effect put on notice.

So, I do not have a great deal of sympathy for some of these last-minute contracts that get negotiated right at the end while they still can.

That is a personal feeling, but Russell Train pointed out the same problem when the Endangered Species Treaty was signed this spring, that they were very fearful that in the period between the signing of the treaty and the time that it actually got ratified that there would be a tremendous amount of pressure on some of the species.

So, as I say, I do not have a lot of sympathy for this. There is obviously a difference between animals that have been taken, skins in the warehouse and the ones that are not yet taken.

You have to differentiate between the two. I do not have a lot of sympathy for that.

Mr. SHARP. Senator, that was one reason that it was provided that no on-going contract beyond 1 year would be acknowledged.

I must assure the speaker that for her to suggest that a fur dealer, a businessman in New York, can foretell at any particular time what the Secretary of the Interior may put on the list from day to day from here on as long as this legislation is on the books is impossible to do. When the Secretary issues the proposed list, we are then advised, fully advised. I do not think the Secretary would ever honor a contract after the proposed list was published.

But prior to that, legitimate business is legitimate business and it should not be made illegitimate simply because someone feels you should be able to imagine what species will be added to the list.

Mr. REGENSTEIN. Mr. Chairman, I would like to say a few candid words about this, if I may. It is in fact difficult for me to understand why the fur industry is worried about this bill.

In their full-page ads they have been taking, they constantly reiterate that the U.S. fur industry does not use endangered species.

Now, we all know how the fur industry killed the 1968 bill and crippled the 1969 bill and I would like to express the hope that this committee does not allow the fur industry to weaken this bill in this last-minute rush.

I would also like the record to show, Mr. Chairman, that the fur industry has been deeply involved in illegal trade in endangered species. On February 21, 1973 Assistant Secretary of the Interior Nathaniel Reed and U.S. attorney for the eastern district of New York Robert Morse held a press conference in New York and I have a copy of those statements. They announced they had broken up a major ring of traffickers in pelts of threatened animals and 1 major fur dealer pleaded guilty to a 50-count indictment concerning illegal dealings in cheetahs, leopards and so on.

It was also announced here that 32 other top leaders of the U.S. fur industry in a related legal action signed consent injunctions, barring future trade in such furs. And I think we know what a consent injunction implies.

Included in this group is Joseph Poser, a frequent witness before congressional committees and this committee, and who is president of the American Fur Brokers Association and vice president of the American Fur Merchants Association and chief spokesman for the Fur Conservation Institute.

I have copies of the U.S. attorney's statement, and Interior Secretary Nathaniel Reed's statement and I shall be happy to submit them to you but I would like the committee to be aware of the attitude of the fur industry on the issue of endangered species.

Mr. SHARP. I object.

Mr. REGENSTEIN. I think it is important that the record be clear on that.

Mr. HUGHES. For the Sierra Club, I concur with Mr. Regenstein's statement. We have been quite aware of a number of abuses under the hardship provision. We have carried on a rather heavy correspondence through the Center for Law and Social Policy with the Department of Interior.

We feel the Department of Interior has been very lax in handling of hardship provisions generally for reporting purposes and under this law, we will probably see the same thing unless the hardship provisions are stringently controlled.

We must consider, since this is endangered species legislation, the primary concern must be the welfare of the animal, not the hardship of the one that is going to take it.

Mr. SHARP. Senator, if this committee relies upon a statement like that, that the Department of Interior has been lax, I think they should be required to lay the facts before you, because it is easy to make charges.

It is easy to make charges like the gentleman down at the end of the table has, that the whole fur industry should be disregarded simply because there have been occasional violations of the law.

The one that he mentioned is the only one that occurred since the act was adopted in 1969.

That is 4 long years ago. But to make these wild charges that a relief measure administered by a man, the Secretary of Interior, or an organization like the Department of Interior, that is charged with the administration of the conservation measure that he is not going to properly administer it; and to do so on the basis of unsubstantiated facts, I think is unfair.

I, therefore, urge that the committee not act on such things but on the facts before you.

Senator TUNNEY. In this press conference held by Mr. Reed, what percentage of the total cheetah population was involved in this illegal taking?

Mr. REGENSTEIN. They were able to determine that one firm dealt in 1,867 cheetahs, I believe. Mr. Chairman, that represents just about the number of cheetahs now remaining in all the parks of Africa.

These were not necessarily imports, they were transactions which were brokered through this country and they were not necessarily

in violation of the endangered Species Act but of the Lacey Act which makes it illegal for an American citizen to be involved in the trafficking in pelts of animals taken illegally in a country.

As for these "wild charges," I have copies of the consent injunctions—copies of Secretary Reed's statement and the copy of the U.S. attorney's statement for the Eastern District of New York. I will submit these for the record. They speak for themselves.

Mr. SHARP. May I comment on that, Senator?

Senator TUNNEY. Yes.

Mr. SHARP. In the first place, the consent injunction specifically states that the execution of the consent injunction, it is like the Federal Trade Commission's consent injunction.

In the proceeding which the gentleman has referred to there was only one indictment, just one of the many, many, many dealers in the entire fur industry.

There were 29 others that agreed to a consent decree. I happened to represent one or two of them and I know the facts and I dealt with the U.S. attorney when my client signed that consent decree.

That decree specifically said the signing thereof is no admission at all that there had been a violation of any law, be it the Lacey Act or other act.

Even the indictment did not involve endangered species on the list. It did involve importation of some species which had been barred from export from other countries.

I do not justify that action but it was not an endangered species list violation at this end.

Now, the major point I want to make is the mere fact that 29 gentlemen signed an agreement that they would, under no circumstances in the future ever violate this act, is not any admission at all there had been violations and I think the gentleman in all fairness should have recognized that fact.

Mr. REGENSTEIN. With all due respect, we all know what a consent injunction implies when you sign it.

The animals were endangered species, let me read the list: These were animals which have been dealt with from 1971 to 1972. 1,867 cheetah, 5,844 leopards, 46,000 marmot, 40,000 ocelot, 2,000 jaguars.

The 50 separate count indictment was illegal dealings involving ocelots, jaguars, giant otter—all of these are endangered.

Mr. SHARP. That is—well, that is not the 29 others.

Mr. REGENSTEIN. Signing a consent decree—implies some involvement.

Mr. SHARP. I will concede there was a violation by a major concern in spotted cat. I do not know that there was any violation by the others. No showing of any such violation.

Mr. KAUFMANN. I would like to respond directly to your question of whether we prefer an indemnification or something else under economic hardship provisions.

We have watched the operation of the economic hardship clause for 6 months now administered by the National Marine Fisheries Service, Department of Commerce. We have observed professional catchers coming in with requests to take marine mammals when the record showed were asking for maybe 100 or 200 percent more animals than they had annually taken previously. What I am saying is that putting

an undue economic hardship clause in the act is simply going to repeat this experience we have had with the Marine Mammal Protection Act. It puts the U.S. Government to considerable cost to hold public hearings across the country to determine what the actual facts are. We feel that it is in the national interest, both in protecting species and in lowering the cost to the U.S. Government, if we simply go the indemnification route rather than provide a clause permitting the taking of endangered species in the case of economic hardship.

Senator TUNNEY. Do you have thoughts as to the dates that ought to be used in the indemnification provisions, if any? Would it be based upon existing contracts at the time the bill was passed or contracts that have been signed at some point prior to the time the bill was passed or contracts that are based upon a history of taking for the previous number of years?

How would you determine that?

Mr. KAUFMANN. We have not yet completed our thought on this problem.

My quick reaction to your question, however, would be that it certainly should relate to contracts in existence at the time the act is signed into law. We think consideration should be given to the total financial situation of the company or the individual claiming indemnification. A reasonable length of time would certainly be 6 months following the signing of the bill into law.

Senator TUNNEY. My own personal feeling is that we have to have a date certain if we have an indemnification clause. If this bill passes the Senate by June 30 and it is not passed by the House, say until October or November, I would think that people are put on notice at the time it passes the Senate.

I do not know why we should be indemnifying people for substantial new contracts after the time it passes the Senate; do you?

Mr. KAUFMANN. I agree with that.

Mr. SHARP. May I point out why?

Forty years from now or 20 years from now there will be a Secretary of the Interior who will then put into the list something that no one could today conceive would ever be on a list.

It is at the point of time that a species is put on the list that dealings in it become illegal. If you provide that relief can be granted only as to contracts in existence at the time the act is passed, good heavens, it would be inequitable. Dealers are going to be buying furs for the future 100 years. It does not make sense to me to say that the indemnities will never be granted simply because there was no contract for pelts of a particular animal at the time the law was passed.

The point of time that is important is when the species is written on the list. From then on, dealings in it become illegal. Prior to that, it is not illegal to contract, buy, sell, or whatever. Unless you are going to ban all killing of all animals in all business for the fur industry. This is a legitimate business and you cannot time that relief clause from the date of the adoption of the act, otherwise you are dampening the ability to do legitimate business in this industry.

Senator TUNNEY. Counsel suggests that a reasonable notice of the animal that is going to be placed on the list might be a way of providing both protection of the animal and protection of the Federal and protection of the industry.

Mr. SHARP. I am sorry.

Senator TUNNEY. A reasonable notice by the Secretary to the industry would be a means of protecting the Federal Treasury, protecting the fur industry, and protecting the species; reasonable notice by the Secretary to the industry that such an animal will be placed on the list.

Mr. SHARP. I think you have, in this particular bill that is now before you—call it the Magnuson bill—I think you have that. Under the old act, it is only in the case of worldwide extinction, that the Secretary could put a species on the list.

Even then he had to give 90 days time for comments before it would become effective under the Administrative Procedure Act.

Now, I think that only gave a 3-months' notice. I do not see why that is not adequate. But you have a better thing in this proposed law, in the Magnuson bill at least, because there you have—it is probably going to go on the list much earlier since the Secretary does not have to find probable worldwide extinction but can find possible extinction in an area or the possible extinction—I do not remember the words but they are really broader.

So, to my mind, the notice is pretty adequate as is. But I urge you not to go back to the date of the passage of the law. That would make illegal anything that the Secretary ever put on for the next 100 years. I do not think that is the intention.

Senator TUNNEY. I think that as much as I would like to spend more time on this, I think we ought to go to other areas before our time runs out.

Mr. HUGHES. May I say something? He challenged our information. I will ask the Center to send all the correspondence between the Sierra Club and the Department of Interior on hardship abuses by the Department of the Interior.

Senator TUNNEY. Does anyone have a thought on whether or not there is a need for exemption to the prohibition against taking those listed in cases of danger to human health or safety? I suppose we are talking about wolves.

Mr. HUGHES. You are not talking about wolves.

Senator TUNNEY. Are we talking about any animals?

Mr. HUGHES. You might be talking about an isolated individual animal somewhere.

Senator TUNNEY. Should there be such a provision?

Mr. HUGHES. Well, it probably would do little harm if it was handled properly.

Mr. SEATER. I agree with that. It would probably cause little harm if handled properly. One of the things we have to be very careful about is in medical research that supposedly is tied to human health. We sometimes allow for an animal like the wolley o'possum of South America to be used in research because it has large chromosomes.

The animal is often imported for karyotyping experiments of all sorts, many of which do not have direct bearing on human health. So it is very difficult to be able to differentiate but we must devise a way of doing this because a lot of animals would be brought in so scientists can simply publish more papers. This happens to be the case the medical field, you know.

Senator TUNNEY. If we are to grant certain special management powers to States, do you think we ought to outlaw the use of bounties as a management tool in those States? If so, why?

Mr. HUGHES. I do not think there is a major wildlife biologist in the county who accepts bounty as a viable and logical means of wildlife control.

Mr. REGENSTEIN. I agree with that.

Mr. WILLIAMS. Yes.

Mr. SEATER. That is right.

Senator TUNNEY. What about, as a penalty for violation of the proposed laws, the suggestion that violators being deprived of grazing permits and/or fishing licenses?

Ms. WILSON. I would be very much in support of that provision. I am sure you are familiar with the system of leasing grazing Federal lands to ranchers for cattle for sheep or various livestock. Grazing is a privilege; it is not a right. They are grazing their cattle and sheep for way below market value—I have done quite a bit of reading into this particular subject—and they are getting a bargain.

In many cases grazing is a valid use of public lands so I think, if someone violates a Federal law, taking away a privilege is a good way of punishment.

Senator TUNNEY. What about the rancher who killed all those golden eagles? Did he lose his privilege in that respect?

Ms. WILSON. There was an individual in Colorado, he pleaded guilty to a few of the charges and was given a very token fine.

Then the National Wildlife Federation petitioned the grazing board to take away his grazing privilege. They did not do so. National Wildlife then petitioned the Interior Department, and under Secretary Whitaker replied they would not take away his privileges because he had suffered enough.

We disagree but the other rancher involved in that related case, Herman Werner, who has been accused of hiring a helicopter which shot quite a few hundred eagles in Wyoming has not gone to trial. It has taken a couple of years and we are all rather unhappy but he has just not gone to trial. So there has been no parallel action simply because the trial has not yet occurred.

Senator TUNNEY. Yes, sir.

Mr. HUGHES. We are unaware of the Government ever revoking a privilege for grazing for a wildlife or any other violation as far as that goes.

I am inclined to think it should be automatic. If someone is found guilty of violating these laws, he should lose grazing privilege.

Senator TUNNEY. Could you explain for the record how such penalties are related to proscribed actions?

Mr. HUGHES. If he did it once and got caught, he probably will do it again out in those lands because you cannot watch him out there. On those huge expanses of land, he can get away with almost anything. It was an accident he got caught that time.

I am sure these violations are going on almost daily. If you get him off that land, he cannot commit that violation any more.

Senator TUNNEY. How about the fishing permits?

Mr. HUGHES. I suppose the same principle applies.

Mr. SEATER. Everything.

Mr. HUGHES. This is done on a State level.

Mr. KAUFMANN. We would support those penalties.

An interesting related subject comes to mind. The Bureau of Land Management is about to publish a regulation which would have the penalty of taking away the privilege of grazing rights on public lands from individuals who violate the executive ordinance relating to the use of poisons to control predators.

There is a pretty good precedent for this.

Senator TUNNEY. Let us turn to criteria for listing.

All of the endangered species legislation now before the Congress provides for the designation and protection of endangered species and species likely to become endangered within the foreseeable future.

It seems desirable to provide for earlier identification of endangered species and to authorize protection measures to be undertaken for a species so depleted that its recovery is difficult or impossible.

However, none of the proposed bills specifies the criteria for designating these two categories of species. What criteria would be suggested for the designation of those categories?

Mr. Seater.

Mr. SEATER. Well, I think that the ecological vitality of an animal should be considered when we are thinking of listing it and I think a lot of animals are ecologically extinct. They may not be biologically extinct but they are certainly ecologically extinct because they do not perform properly their ecological task or their ecosystem function.

Senator TUNNEY. How do we insure designation only of those species or subspecies that are endangered within a particular geographical area?

Mr. SEATER. Well, I think of the gray wolf, for instance. There are certainly very few gray wolves in say northern Michigan on the Peninsula. Perhaps the pack that exists there performs its ecological function in a small area, but over the whole area you do not have a large predator acting on the basis. Whereas in Canada or Alaska the situation may actually be reversed, you have enough wolves in many regions to insure the ecological health of the ecosystem. I think this is a job for scientists.

They will have to evaluate all these factors.

Senator TUNNEY. Mr. Tiffany—we have about a minute and a half now before I have to go vote.

Before the Secretary acts to list a species not universally endangered, should public hearings be held in the affected geographical area in your opinion?

Mr. TIFFANY. I think there could be very important input from Alaska as regards its region, both scientifically and culturally; yes, sir.

Senator TUNNEY. I must leave and unfortunately, I am not going to be able to come back because it is now 12:30. I would like to ask anyone of you between now and, hopefully Friday, if you have any specific comments that you would like to make about any of the points that have come up, any of the statements made by others, to please give to the committee your thoughts in writing. I would also like to ask each one of you if you could leave your addresses and your telephone numbers with the committee today before leaving so that we can reach you if we need to.

My thanks to every one of you for coming here today and giving us the opportunity to pick your brains with respect to the legislation that is before us.

As I say, I anticipate that there will be a clean bill introduced and we are going to probably take some of the key elements of the bills that are before us and probably add additional elements that are not in those bills, or modifications of the elements that are in those bills.

So we need your help and assistance before that clean bill is put in. It will be a committee bill. So, with that, I will adjourn these hearings and we will try to get a good piece of legislation before the Senate before the cutoff date of June 30.

Thank you.

[The statements follow:]

STATEMENT OF BERNARD FENSTERWALD, JR., COUNSEL

The Committee for Humane Legislation, Inc., wishes to thank the Subcommittee and its distinguished Chairman for the opportunity to appear this morning and present our views on this legislation.

I am the Counsel for the Committee for Humane Legislation, Inc., headed by Miss Alice Herrington, which attempts to conserve wildlife, insure humane treatment for all animals, wild and domestic, and save depleted and endangered species from extinction.

Our basic concern with the bills introduced concerning endangered species is the concept that species listed as endangered should be protected from further depletion. The belief of the Committee for Humane Legislation is that this concept does not go far enough. The ultimate goal of legislation in this area should be the restoration of the status of these species to the level consistent with maintenance of their role in their particular ecosystems. These species must be restored to a level at which their protection need not be specifically enacted by Congress. Our ultimate goal should be to eliminate the need for an endangered species list.

Both bills refer to this goal of restoration in policy statements, but, in order to insure the elements of this legislation adequately reflect this goal the Committee for Humane Legislation offers the following suggestions:

(1) The definition of "take" should include "the destruction, modification, or curtailment of habitat". Species now endangered with extinction must, of course, be protected and restored, but unless their habitat is also protected and restored, these species will always require the specific protection of the government. If the status of a species is to be restored to the level at which it may function normally within its ecosystem, the habitat of that species must be intact. This concept is included in S. 1983, but is absent from S. 1592.

(2) The definition of "endangered species" should be extended to include a species endangered in a "population segment". Population segments located in different areas necessitate different measures for adequate protection and restoration. This extension would facilitate the implementation of regulations intending to protect and restore these species. This concept is absent from both bills.

(3) The Federal Government should retain authority and responsibility for the regulation of "taking" of an endangered species and should provide money to the States for the purposes of aiding management of endangered species and aiding in enforcement of the States' laws concerning endangered species. We believe Section 5(c) of S. 1592, and Section 6(c) of S. 1983 should be modified accordingly.

(4) The concept contained in Section 5(b) of S. 1592 and in Section 8(b) of S. 1983, of the taking of a number of animals of an endangered species for "economic hardship", and the concept contained in Section 5(a) of S. 1592 and in Section 8(a) of S. 1983, of permitting the taking of endangered animals "for zoological, educational, or scientific purposes", as long as "such act will not adversely affect" the species, should either be more restricted or deleted altogether. Again, we should enact restorative, not merely protective legislation. The taking of any endangered animals should not only be non-harmful to the species but also beneficial to the species. The problem of a species endangered with extinction is a serious one and the legislation must reflect that seriously.

Of the two bills, we prefer S. 1983 but we believe that some modification would make it a better bill. With the Committee's permission, we will submit one more draft bill which will incorporate these suggestions, and which we believe would be the optimum bill to adopt.

Again, let us thank you for the opportunity of appearing before this distinguished Subcommittee today and giving our views on this very important legislation.

STATEMENT OF CYNTHIA WILSON, REPRESENTATIVE, NATIONAL AUDUBON SOCIETY

Mr. Chairman and members of the subcommittee, I am Cynthia E. Wilson, Washington Representative of the National Audubon Society. We appreciate the opportunity to comment on this important legislation. As you know, preservation of endangered species has long been one of the priority goals of the Society.

The proposed legislation, S. 1592, contains many needed improvements over the present law, probably most important the extension of protection to species "likely within the foreseeable future to become threatened with extinction." We are hopeful that this important provision will bring species not presently protected under the program's purview so that they can be appropriately protected and prevented from slipping into the category of being "presently threatened with extinction."

Another desirable provision is the extension of federal protection to native species, with a provision that such authority can be delegated back to the states. Although we realize that a number of states are unhappy about this, we feel that it is an appropriate reflection of the nationwide interest in endangered species. No matter where a particular species resides, its fate is of concern to citizens all around the country. As things stand now, it may be legal to kill an endangered species in one state—even though it is on the federal list—while the same species is protected in another state. This makes enforcement extremely difficult and confuses the public.

We hope that in refining this legislation the Committee will make sure that if preemption does occur, it will not create a void in responsibility. Obviously the cooperation of the states is desirable and necessary, and we think a grant program to states who meet appropriate criteria would be of great assistance, since most states lack funds to manage non-game species.

One part of the Administration's bill which concerns us is Section 4(e). It appears to us that this would possibly void or create confusion in the Administration of New York State's Mason Act and the other state endangered species laws patterned after it, such as Massachusetts, California and Connecticut.

As this Committee knows, a number of federal regulatory laws, the pesticide act for example, permit states to set stricter laws if they choose. It has been our observation that oftentimes states can lead the way in setting tough regulations, whereas sometimes federal legislation—because it must inevitably be a compromise between so many diverse interests—is more in the nature of a common denominator. A good example is the Mason Act, which protected the spotted cat long before the federal government got around to including them on the federal government got around to including them on the federal endangered species list. In the same fashion, California has protected the kangaroo, some species of which have recently been added to the federal list.

We believe the following language handles the question of stricter state laws satisfactorily:

"Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting the power of any state to enact legislation more restrictive than the provisions of this Act for the protection and conservation of fish and wildlife, including, but not limited to, the regulation or prohibition of the possession, sale or offer for sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead."

Another issue which is troublesome is the splitting of jurisdiction between the Secretaries of Commerce and Interior, "pursuant to the provisions of Reorganization Plan Number 4 of 1970," which as we understood it left the endangered species program in Interior. Although the Marine Mammals Act placed management authority for some of these species with NOAA, we still believe that final authority for determining whether a species should be included on the endangered list lies with Interior.

We would also like to comment on exceptions for educational, scientific and zoological purposes. We believe that such exceptions should be limited so that (1) they do not in themselves constitute a drain on populations of endangered species, and (2) the taking will benefit such species. We suggest that this intent could be more strongly expressed by making enhancement of the survival of such fish and wildlife

the principal criterion for these exceptions, in addition to the requirement that the taking not adversely affect the species' survival. This would not exclude consideration of exceptions for any of the three categories, but it would emphasize the primary purpose of the Act.

We would also like to urge the Committee to scrutinize the subject of economic hardship permits. While we are aware that it is possible that there could be genuine cases of economic hardship as a result of passage of this legislation, we believe they will be very few. For one thing this legislation has been under consideration for more than a year, and its passage should come as no surprise to anyone involved in commerce of this nature. We are fearful that there will be a scramble to place orders for species which are candidates for the list prior to passage of this Act, and we do not believe that allowing exceptions of this nature is consistent with the purposes of the act.

As far as I know, in the past there has been no mandate for Interior to publish information about applications for economic hardship, and we believe this information should be public. I understand that it is possible to pry it out of Interior, but it should be made public through the Federal Register or some other means. NOAA has been publishing information about such applications under the Marine Mammals Act, and we have found this to be very helpful. Frankly, I would be a lot happier if there were no exceptions for economic hardship included in the Act, particularly in light of some of the unethical behavior which some furriers have engaged in.

We have some other comments on technical points, which I am submitting for the record. The most important of these is the need to add "or the destruction or modification of critical habitat of such species" to the end of Section 3 (d) of the bill.

The definition of "take" should include the term "harass" in addition to the terms already included.

The definition of "import" should include "entry into a foreign trade zone" since such zones can be used for transshipping of endangered species products.

In Sec. 2 (b) the language "and insofar as is practicable and consistent with the primary purposes of such bureaus, agencies and services" is too narrow and could permit other federal agencies to continue contributing to the decline of endangered species. We prefer the language in Sec. 2(c) of H.R. 37.

In Sec. 2(c)(1) the adjective "drastic" before modification should be deleted. Alteration of habitat to even a relatively small degree could spell doom for an endangered species. The phrase "to the extent practicable" should also be deleted from this section.

In Sec. 4(b), a provision should be added to direct the Secretary to publish such proposed regulations in the Federal Register and give the public an opportunity to comment.

[Whereupon, at 12:37 p.m. the subcommittee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

JUNE 25, 1973.

Hon. TED STEVENS,
U.S. Senator,
Washington, D.C.

DEAR SENATOR STEVENS: I have today testified before Senator Tunney on behalf of the Alaska Native Arts and Crafts Coop in hopes of gaining a Native exemption similar to the Marine Mammal Bill. On reconsideration of my testimony, I feel there is one area that I may not have emphasized strongly enough and I would appreciate your assistance in making the Committee aware of it.

The Marine Mammal Act allows for the Alaska Native exemption, but that exemption also includes the authority of the Secretary of Treasury to place a species on the endangered list, thus eliminating the Alaska Natives opportunity for taking. I think two important points should be included in any new bill in regards to this matter.

First, let it be clearly demonstrated that the Eskimo or Indian Aleut taking of this endangered species is relevant to its survival. Let it be proven beyond a doubt that their impact is the critical factor or a critical factor in the survival of the species before they are refused their time honored privilege of continuing their life.

Second, that it be incumbent upon the Secretary of the Interior or whatever other authority is in charge of these rules that the burden of proof be placed on the Secretary to prove that the Native Alaskan is the critical factor. The Alaska Natives does not have the resources, the awareness nor the ability to defend his position in the eco system of Alaska. It would seem only fair that if the non-Native is enforcing these laws that it also be the non-Native's responsibility to prove the Natives of Alaska re the critical factor in the survival of the species.

We would greatly appreciate your submitting the above to the Committee so that they may be considered in any Native exemption that will be granted.

Thank you very much for your time.

Sincerely,

HENRY D. TIFFANY III,
General Manager, Alaska Native Arts and Crafts, Inc.

OFFICE OF THE GOVERNOR,
Juneau, Alaska, June 19, 1973.

Hon. TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR TED: In response to your request for comment from the State of Alaska on S. 1592, I am providing this letter. The letter is the result of a coordinated review by the Alaska Departments of Fish and Game and Environmental Conservation. I cannot emphasize too strongly the negative impact certain provisions of this bill might have upon our State.

A careful review of S. 1592 (Endangered Species Conservation Act of 1973) raises strong fear that this legislation would further erode the states' authority to manage resident wildlife species. I am reminded how a limited need for wildlife protection was successfully used as justification for enacting the Marine Mammal Protection Act of 1972, thereby usurping state jurisdiction over species that were not only abundant but which were being carefully conserved and managed by the states. It is evident that S. 1592 provides a legal mechanism whereby additional resident species of fish and wildlife could, at the discretion of the Secretary of the Interior, be placed under federal control even though a state were fully meeting its obligations to protect, conserve and manage them. As you know, Alaska is making heavy investments to restore stocks of commercially valuable fish which were depleted by over-exploitation during the many decades of federal control.

Fortunately, our wildlife resources have fared better and Alaska's conservation efforts are proving highly effective in maintaining optimum levels of abundance of even the rare species such as glacier bears, the grizzly bears of the Arctic, sea otters, wolverines, etc.

It is not difficult to visualize that the Secretary would fall under extreme pressure from protectionist groups to classify many of our Alaskan species as endangered simply because they have been extirpated over much of their original range on this continent. We must note that the extraordinarily successful marine mammal conservation program which the state developed was legislated out of existence at the urging of protectionists and no equivalent program has been developed by the federal government. This situation is clearly bad for the resources and for the people who depend upon them.

Now, I would like to offer specific comments on S. 1592 and recommend that objectionable features be amended or removed.

Sec. 2.(b), (P. 2 lines 23 and 24) makes reference to species or sub. species which ". . . are likely within the foreseeable future to become threatened with extinction . . ." Obviously, in the minds of many individuals all species of fish and wildlife are threatened with extinction within the foreseeable future. I seriously question that any Secretary with the most clairvoyant staff should have license to impose federal controls over resident species on the basis of subjective predictions involving the foreseeable future.

Sec. 2.(c)(1), (P. 3 lines 5, 6 and 7) makes provision for the Secretary to consult as appropriate with the affected states in arriving at what species or subspecies shall be regarded as endangered. This wording leaves the matter of consultation with the states entirely at the discretion of the Secretary and provides no assurance that the judgments or the recommendations of the states will influence the Secretary's determinations. It seems to me important and proper that the Secretary not regard resident species or subspecies endangered, threatened with extinction, or likely within the foreseeable future to become threatened with extinction, unless the governor of the state in which such resident species are found concurs with such designation.

Sec. 8.(a) and (b), (Pp. 19 and 20) provides for cooperation with the states, which in fact means nothing more than consulting with the States when and to the extent that the Secretary chooses to do so. I firmly believe that too much authority is concentrated within the Secretary's office without appropriate checks and balances. Actions taken under authority of S. 1592 that deal with the classification of resident fish or wildlife should have the concurrence of the states in which such fish or wildlife occur.

I am certain you will agree that Alaska has done more over a long period of time to adequately protect and manage our wildlife resources than any of the other 50 states. To now be faced with the distressing possibility that well-meaning but ill-conceived interference could jeopardize the great progress that has been made is of deep concern to me.

Warmest regards,

WILLIAM A. EGAN, *Governor.*

[**Telegram**]

ANCHORAGE, ALASKA, June 20, 1973.

Senator TED STEVENS,
Washington, D.C.

Thank you for your wire alerting Alaska Professional Hunters Association to the danger of S. 5192. We consider this bill a carbon of S. 3199 (administration bill) introduced February 18, 1972 apha opposes S. 5192 as written we feel too much power is vested with Secretary of Interior and States rights concept of wildlife management will receive low priority. We support endangered species protection based on factual biological data but recommend that residents species be considered endangered State by State only after consultation with appropriate State agencies we also recommend that endangered species legislation encompass only nongame species. We support Federal jurisdiction over migratory birds.

Warm personal regards.

CLARK ENGLE,
President Alaska Professional Hunters Association.

COOK INLET REGION, INC.,
Anchorage, Alaska, June 14, 1973.

Hon. TED STEVENS,
U.S. Senator,
Federal Building, Anchorage, Alaska.

DEAR SENATOR STEVENS: Because of the absence of a copy of S-1592 and desiring to have a position on record, I am answering your telegram as follows.

Cook Inlet Region would like to go on record that we are against any bill that will infringe in any way, upon the rights of subsistence hunting by any person who qualifies as a native under the Native Claims Settlement Act.

It is our opinion that subsistence hunting has in no way endangered any species and trophy hunting is what needs more regulation and control.

If after reading the bill, I have any additional comments, you would be so advised by me.

Sincerely yours,

RALPH A. JOHNSON, President.

CHUGACH NATIVES, INC.,
Anchorage, Alaska, June 25, 1973.

Senator STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Thank you for sending us a copy of S. 1592 and asking for our comments.

It is our feeling that public hearings should be held in Alaska on this bill and on all bills related to endangered species, because Alaska's situation regarding fish and game is very much different than the other 49 states.

We object to the following language found on lines 17 & 18, page 2, "or are likely within the foreseeable future to become threatened with extinction." This statement is too broad and may encompass fish and game that are not in danger of extinction just by the faulty judgment of some people.

In the Act where it refers to species or subspecies, species should be dropped and the bill applied only to subspecies. An example of our reasoning is the wolf; there are plenty of wolves in Alaska where, in some other states, they are close to extinction. To put wolves on the endangered species list would be definitely unnecessary and in some cases, harmful as far as Alaska is concerned, where in other states or areas it may be desirable. Other species in the same category are the bald eagles. The Southern bald eagle is in danger where there are no problems with the Northern bald eagle. The Aleutian Canadian honker, found on Buldir Island, may be in danger whereas the Canadian honker in its entirety is not in danger—far from it.

In the case where the animal, bird or fish is a resident of any particular state, they and only they should initiate the steps to place the animal, bird or fish on the endangered subspecies list, and should required to hold public hearings on the proposed action.

In closing, we urge you to ask for hearings in Alaska on this bill.

Sincerely,

RICHARD JANSON, Administrative Assistant.

STATEMENT OF JOEL M. PICKELNER ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Joel M. Pickelner, Conservation Counsel for the National Wildlife Federation which has headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C.

Ours is a non-governmental organization which has independent affiliates in all 50 States, Guam, Puerto Rico, and the Virgin Islands. In turn, these affiliates are made up of local groups and individuals who, when combined with associate members and other supporters of the Federation; number an estimated 3½ million persons.

We welcome and appreciate the opportunity to comment on this bill, which would "provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction, or likely within the foreseeable future to become threatened with extinction, and for other purposes."

Mr. Chairman, delegates to our 37th Annual Meeting met here March 15-18, 1973, and adopted a resolution which sets out our latest policy on endangered species of wildlife. In this resolution, we recognize that many species of fish and wildlife are endangered and/or are threatened with extinction. We express the belief that these species merit suitable protection and management under sound recovery plans. And, we feel that cooperative joint Federal-State efforts are needed to ensure the most effective effort to manage endangered species.

The Federation then urged the adoption of these principles:

1. That agencies of the Federal Government be required to cooperate fully with state wildlife agencies in any program to manage endangered species under federal stewardship;

"2. That the state agencies be given an appropriate opportunity to prepare and manage recovery plans, and retain jurisdiction over resident species. And such authority shall remain with the States until such time that the State regulatory agency declares its inability or unwillingness to fulfill the necessary obligations.

"3. That the States continue to exercise the prime responsibility for managing resident species, including those classified as rare, endangered or threatened with endangerment;

"4. That all agencies of the Federal Government be required to work to the closest degree possible with state wildlife agencies in the development of lists of endangered and threatened domestic species. And that mutual agreement (State-Federal) be obtained for resident species before specific classification is established."

And to these probably should be added a requirement that the Federal Government provide significant and meaningful financial help to the States in these cooperative efforts. In fact, we feel that endangered species of wildlife are of sufficient importance for economic, scientific, educational, and recreational purposes to the Nation that they merit protection by programs financed with general fund monies at both Federal and State levels.

We also would hope that any bill reported by this Committee will lay additional stress upon the need for habitat improvement.

And, so, Mr. Chairman, we support the broad principles expressed in S. 1592, the "Endangered Species Conservation Act of 1973", and the other proposals with similar objectives, as we have supported the preservation and protection of endangered species in the past. However, we hope any bill reported by this Committee can reflect the approaches enumerated in our resolution and expressed earlier in this statement.

We would like to comment on the specific proposals.

In line with objectives stated above, we recommend that Sec 2(c)(1) of S. 1592 be amended to insert the words "and agreement" before the phrase ". . . with the affected States," thereby bringing these units of government into determinations on what species or subspecies shall be regarded as endangered. In a similar vein, we recommend that the words "and the appropriate state agencies" follow "in the judgment of the Secretary" later in that same subsection. And, in Sec. 2(c) (2), the first phrase should be amended to read: "after making such determination *in cooperation with state wildlife agencies . . .*" State wildlife agencies should be made integral parts of the determination process.

Sec. 3(a) should be amended in this manner . . . "that he lists, *after cooperating to the closest degree possible with appropriate state wildlife agency authorities*, as endangered species . . ."

Sec. 3(c) authorizes funds for the acquisition of lands and waters to conserve endangered species. However, if the Administration continues to impound and/or divert monies from the dedicated Land and Water Conservation Fund this section, despite its desirability, will have little or no meaning.

Sec. 4(b) of S. 1592 authorizes the Secretaries to issue regulations to protect and preserve endangered species. Again, either the State wildlife agencies must be made integral parts of the decision-making process outlined here, or this provision must be limited to those species which are migratory and fall under the true jurisdiction of the Federal Government.

Sec. 4(e) allows the States to have more restrictive laws than those imposed by the Federal Government and we are in agreement with this principle.

Sec. 5(c) of S. 1592 allows for Federal-State cooperation. In this proposal, only the Secretary makes the determination when a State has a satisfactory program.

Again, we ask that these determinations be made jointly. S. 1592 also makes no differentiation between "resident" and "migratory" species.

We particularly like the provision in Sec. 6(a)(3) which would void livestock grazing permits for persons convicted of a criminal violation of this Act. We have recommended that the Secretary of the Interior refuse grazing permits to persons convicted of wholesale killings of eagles, and thus far have been refused. As a result, we would recommend that the bill be amended to insert stronger language following "hereunder", reading: "*shall* immediately modify, suspend, or revoke . . ."

We agree with the principles expressed in Sec. 7 of S. 1592, believing all encouragement possible should be extended to other Nations to protect endangered species worldwide.

Sec. 8 of S. 1592 directs that the Secretaries cooperate with the States. However, again, this cooperation leaves determination of "to the maximum extent practicable" up to the definitions of the Secretaries. Agreements should be mandatory on resident species.

In conclusion, Mr. Chairman, we also feel that this bill is deficient in that there are no provisions for Federal cost-sharing of these programs. Without added funds to finance the added responsibilities, on both State and Federal levels, law enforcement and administrative staffs already far too small will be stretched even farther.

Thank you for the opportunity of making these observations.

